

Docket: 2009-2912(IT)I

BETWEEN:

RICHARD ROBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on March 10, 2010, at Ottawa, Canada

Before: The Honourable Justice Réal Favreau

Appearances:

Agent for the appellant: Christian Lachapelle
Counsel for the respondent: Antoine Lamarre

JUDGMENT

The appeal from the reassessment made pursuant to the *Income Tax Act*, dated April 2, 2009, respecting the appellant's 2000 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 15th day of March 2011.

“Réal Favreau”

Favreau J.

Translation certified true
on this 12th day of May 2010.

Daniela Possamai, Translator

Citation: 2011 TCC 166
Date: 20110315
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Appellant,

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REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from a reassessment made pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the Act), dated April 2, 2009, respecting the appellant's 2000 taxation year. In making the reassessment, the Minister of National Revenue (the Minister) disallowed the business loss of \$31,581 claimed by the appellant and imposed a penalty for gross negligence under subsection 163(2) of the Act in the amount of \$1,953.14.

Facts

[2] The facts pertaining to the appellant's income tax return for the 2000 taxation year, the two adjustment requests by the appellant and the assessments issued by the Minister are as follows, as described in paragraphs 5 to 9 of the Reply to the Notice of Appeal:

[TRANSLATION]

5. The appellant reported employment income of \$7,100 for the 2000 taxation year.

6. By notice of assessment dated June 25, 2001, the Minister assessed the tax payable by the appellant for the 2000 taxation year as reported.
7. In 2006, the appellant filed an adjustment request for the 2000 taxation year concerning the following income:

Reduction of employment income		\$7,100
Dividends		\$1,181
Interest		\$394
Capital gain (period 2)	46 047 taxable (66.66 %)	\$30,698
Capital gain (period 3)	1 343 taxable (50.00 %)	\$671
Net capital losses of other years		<u>(\$25,716)</u>
Total increase in taxable income		\$128

8. By notice of reassessment dated July 19, 2007, the Minister reassessed the appellant's tax payable for the 2000 taxation year, as requested by the appellant in the adjustment request for the 2000 taxation year described at paragraph 7. No penalty was imposed as part of the reassessment.
9. On August 15, 2008, the appellant filed a second adjustment request for the 2000 taxation year in which he claimed a business loss of \$31,581.

[3] In assessing gross negligence penalties payable by the appellant for the 2000 taxation year, the Minister relied on the following presumptions of fact, described at paragraph 13 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (a) the appellant was a resident of the province of Quebec;
- (b) the appellant never operated a business either during the year 2000 or during previous or subsequent years;
- (c) the appellant did not incur [TRANSLATION] "Management fees according to a private contract" of \$12,000 or realized a [TRANSLATION] "Refund of expenditures according to a private contract" of \$19,581;
- (d) the [TRANSLATION] "Refund of expenditures according to a private contract" of \$19,581 represents personal expenses;
- (e) the appellant reported investment income and taxable capital gains in the amount of \$32,944 for the 2000 taxation year;

- (f) the business loss reported by the appellant represents 96% of his income;
- (g) the appellant did not keep adequate books and records; and
- (h) the appellant signed his adjustment request for the 2000 taxation year.

[4] The issue is whether the Minister was correct in imposing a gross negligence penalty with respect to the disallowed business loss in the amount of \$31,581 for the 2000 taxation year pursuant to subsection 163(2) of the Act.

Appellant's position

[5] The appellant testified at the hearing. He claimed that in 2000 he was retired and unemployed for six years. He said he sold his residence in 1999 and that he deposited the proceeds from the sale at a banking institution for investment purposes. He now lives on a farm and receives an annual pension of about \$20,000. According to him, the Minister was not justified in imposing the gross negligence penalty as all taxes for the year 2000 were paid and because he did not commit fraud. He has always been forthcoming.

[6] Agent for the appellant, Christian Lachapelle, also testified at the hearing to explain the principles underlying the method described as being [TRANSLATION] "Method C2." In this context, he produced as Exhibit A-2 a list of documents, including the following: the agreement under private writing entered into on August 15, 2008, between Fiducie Fiscalité Privée, represented by Christian Lachapelle, Christian Lachapelle as agent and Richard Robert as the client; the list of personal expenses grouped under the document entitled [TRANSLATION] "Private accounting for the human being Richard : Robert – 2000," which, according to an affidavit dated August 15, 2008, were compiled to the best of his knowledge and recollection; and, finally, the letter of transmission dated August 15, 2008, by which the appellant asked the Canada Revenue Agency (the CRA) to amend his tax return for 2000 so that the net revenue net that was 0 become a loss of \$31,581.04.

[7] The agent filed, as Exhibit A-3, twenty-six documents pertaining to Method C2, which essentially included the correspondence exchanged with the CRA and various other persons or agencies to whom submissions were made. The method rests on the premise that a corporation is assigned to any human being at his or birth via birth certificate. Accordingly, a mere taxpayer (a natural person) is a corporation

who has a business by default, requiring neither incorporation nor registration to be able to operate.

[8] In correspondence dated November 18, 2008, addressed to Laurier Lamontagne of the CRA (Exhibit I-4), the relationship between the corporation RICHARD ROBERT and the human being Richard : Robert in the context of this case is described as follows at paragraphs 6, 7 and 8 of page 2:

[TRANSLATION]

The human being *Richard : Robert* signed a private contract with the corporation RICHARD ROBERT (the *natural person*). The contract recognizes *Richard : Robert* as being invaluable to the corporation RICHARD ROBERT. Without *Richard : Robert*, the corporation RICHARD ROBERT cannot operate or generate revenue. The human being *Richard : Robert* is therefore indispensable to the corporation RICHARD ROBERT (the *natural person*) in order for it to operate. Thus, the corporation RICHARD ROBERT undertook, by private contract and as compensation for the immeasurable efforts made, to reimburse its service provider (the human being *Richard : Robert*) for any outlay or expense made during the period covered by the contract. Such reimbursement of the taxpayer's expenses (the *natural person* or the corporation RICHARD ROBERT) is for the purpose of gaining or producing income for all business ventures in which the corporation is involved, in accordance with paragraph 18(1)(a) of the federal *Income Tax Act* or the provincial equivalent. Note that for tax purposes, only a portion of the outlay or expense is taken into account (see *Other expenses* in the T-2124 already provided).

Moreover, the contract requires the corporation RICHARD ROBERT to pay additional compensation (determined at the end of the year) to the human being *Richard : Robert* in the capacity as Animator of the *natural person* RICHARD ROBERT (this constitutes the *Management and administration fees* in the T-2124 already provided).

Thus, the private contract makes *Richard : Robert* a provider of private services to the *natural person* RICHARD ROBERT.

[9] At paragraphs 2 and 3 of page 3 of the correspondence described in the previous paragraph, the following is specified:

[TRANSLATION]

This private contract was made possible by the special privilege granted by Her Majesty the Queen in Right of Canada. The Queen granted *Richard : Robert* the right to administer the *natural person* RICHARD ROBERT as he sees fit to the benefit of Her Majesty's realm. The human being *Richard : Robert* now acts as owner of the corporation RICHARD ROBERT, in accordance with section 9(2) of

the federal *Income Tax Act* or the provincial equivalent, which allows the human being *Richard : Robert* to sign all contracts for the corporation RICHARD ROBERT.

The privilege granted by the Queen is subject to a promise made by the human being *Richard : Robert* to the Queen which consisted in promoting the growth of the realm of Her Majesty the Queen in Right of Canada, in order to be viewed as an ally.

[10] The consequences of the existence of said private contract are described as follows at paragraphs 8, 9 and 10 of page 3 of the correspondence described in the two previous paragraphs:

[TRANSLATION]

By virtue of this private contract, all vehicles owned or rented in the name of the *natural person* RICHARD ROBERT are used by the Animator. All expenses incurred by the Animator by and for the vehicles are covered by the private contract and are reimbursed accordingly.

By virtue of this private contract, all property in the name of the *natural person* RICHARD ROBERT is used by the Animator. All expenses made by the Animator by and for the property are covered by the private contract and are reimbursed accordingly.

By virtue of this private contract, all amounts of money in bank accounts in the name of the *natural person* RICHARD ROBERT are the property of the human being *Richard : Robert*, and no transfer is necessary to pay any compensation owed to the human being *Richard : Robert* by the *natural person* RICHARD ROBERT. Only internal accounting is used.

[11] The following exhibits supporting the management fees of \$12,000 and the reimbursement of the expenditures of \$19,581 were filed in evidence by the respondent:

[TRANSLATION]

- a corporate resolution dated November 18, 2008, authorizing the conclusion of the employment contract of Animator *Richard : Robert* signed by *Richard : Robert* as owner of the corporation RICHARD ROBERT;

- the employment contract entitled “Contract for Hire – Independent ANIMATOR Agreement” dated November 18, 2008, between the corporation RICHARD ROBERT and Animator Richard : Robert;
- a document entitled “UCC Financing Statement” dated November 18, 2008, granting a collateral security for the contractual obligations under private contract no. 947475613-1 dated November 18, 2008;
- an invoice from Richard : Robert to the corporation RICHARD ROBERT dated November 18, 2008, with an effective date of December 31, 2000, in the total amount of \$51,162.07, that is, \$39,162.07 for the reimbursement of annual expenses of which \$19,581.04 may be claimed for tax purposes, and \$12,000 in annual fees for the animator’s services;
- a resolution of the corporation RICHARD ROBERT adopted on November 18 , 2008, but effective December 31, 2000, by which the corporation RICHARD ROBERT accepted to transfer the required assets to the human being Richard : Robert as compensation for management services rendered for the year 2000 in the amount \$51,162.07.

Analysis and conclusion

[12] In 2000, subsection 163(2) of the Act provided that the penalty for gross negligence could be imposed in the circumstances set out in the paragraph before paragraph (a):

(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

[13] In order for the penalty to apply, it must be established that the taxpayer “knowingly, or under circumstances amounting to gross negligence” made a “false statement” in a return or participated or acquiesced in any way in the preparation of the return.

[14] Under subsection 163(3) of the Act, the burden of establishing the facts justifying the assessment of the penalty is on the Minister. Subsection 163(3) of the Act reads as follows:

(3) Burden of proof in respect of penalties -- Where, in an appeal under this Act, a penalty assessed by the Minister under this section or section 163.2 is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

[15] In *Venne v. The Queen*, 84 D.T.C. 6247, Strayer J. of the Federal Court (Trial Division) described at paragraph 37 the notion of “gross negligence:”

. . . '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. . . .

[16] The courts have been called upon on numerous occasions to rule on the interpretation to be given to subsection 163(2) of the Act. Seeing as it is a provision of a penal nature, the courts have often applied a restrictive interpretation of the legislative provision. In cases where a reasonable interpretation would avoid the penalty in a particular case, that construction should be adopted (see *Venne, supra*, at paragraph 34).

[17] In this case, I do not believe the interpretation provided by the appellant is reasonable in the circumstances. In my view, the Minister has met his burden of proof and unequivocally established that the appellant knowingly, or under circumstances amounting to gross negligence participated in the making of a false claim for business expenses in his tax return for the 2000 taxation year.

[18] The appellant's testimony was not credible, he knew nothing about the operations and activities of the corporation RICHARD ROBERT and was confused about who the taxpayer was, who the corporation was or who he himself was as a human being. He was not aware of whether there were any transfers of funds between the corporation assigned to him and of which is was animator and himself as human being.

[19] In light of the evidence, the corporation RICHARD ROBERT was never officially registered in Quebec or Canada, and the number used to identify the corporation was appellant's birth certificate. Said corporation seems to have emerged 63 years after it was assigned to the appellant at birth. Said corporation never filed a T-2 tax return and the so-called accounting method used was merely an internal and

theoretical one. The corporation never operated a business and never gained income; it only had expenses.

[20] The corporate documents filed in evidence, described at paragraph 11 above, were all prepared by the appellant's agent, Christian LaChapelle. While the documents are all dated November 18, 2008, they should be applied retroactively to the year 2000. The documents are nothing more nor less than retroactive planning presented for the purposes of reducing the taxes and interest payable by the appellant since 2000. The documents show that the appellant used a fictitious montage without any legal basis. The existence of a business by default has no legal basis in law.

[21] The expenses claimed by the appellant were not incurred for the purpose of gaining income. Such expenses were personal and living expenses for which no deductions can be claimed under paragraph 18(1)(h) of the Act.

[22] After filing the second adjustment request on August 15, 2008, the CRA provided the appellant with a request for information by letter dated November 3, 2008. The appellant did not respond as the CRA's questionnaire contained 48 questions and that in order to respond, he would have had to devote too much time and money when, in any event, there were no records to submit. The appellant was informed by letter dated December 15, 2008, that the CRA proposed to apply the gross negligence penalty if the appellant failed to provide useful explanations or information in support of his adjustment request. Instead of submitting the required information, the appellant first proceeded to request that the CRA suspend processing of his adjustment request and subsequently withdraw his signature from his 2000 income tax return. The CRA did not respond to those requests.

[23] For these reasons, the appeal is dismissed.

Signed at Montréal, Quebec, this 15th day of March 2011.

“Réal Favreau”

Favreau J.

Translation certified true
on this 12th day of May 2010.
Daniela Possamai, Translator

CITATION: 2011 TCC 166

COURT FILE NO.: 2009-2912(IT)I

STYLE OF CAUSE: RICHARD ROBERT AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: March 10, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau

DATE OF JUDGMENT: March 15, 2011

APPEARANCES:

Agent for the appellant: Christian Lachapelle
Counsel for the respondent: Antoine Lamarre

COUNSEL OF RECORD:

For the appellant:

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