Docket: 2018-1426(GST)I

BETWEEN:

HIDE & SEEK BAILIFF SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 2, 2019, at Kamloops, British Columbia

By: The Honourable Justice Ronald MacPhee

Appearances:

Counsel for the Appellant:	Corine LeBourdais
Counsel for the Respondent:	Keelan Sinnott

JUDGMENT

The Appeal from the assessments made under the *Excise Tax Act* for the Appellant's reporting periods from January 1, 2010 to December 31, 2010 and from January 1, 2011 to December 31, 2011 are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to an additional $246 in Input Tax Credits for the Appellant's reporting period of January 1, 2010 to December 31, 2010, and an additional $158 in Input Tax Credits for the Appellant's reporting period from January 1, 2011 to December 31, 2011.

Signed at Ottawa, Canada, this 5th day of November 2019.

"R. MacPhee"

MacPhee J.

Citation: 2019 TCC 251
Date: 20191105
Docket: 2018-1426(GST)I

BETWEEN:

HIDE & SEEK BAILIFF SERVICES LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

MacPhee J.

I. OVERVIEW

[1] The Appellant, Hide & Seek Bailiff Services ("Hide & Seek"), was incorporated in British Columbia in 2003. Hide & Seek provided various bailiff services, including tasks such as repossessing vehicles, service of pleadings and skip tracing.

[2] In 2010 and 2011, the Minister of National Revenue ("the Minister") assessed the Appellant to increase the amount of GST payable under the *Excise Tax Act* RSC 1985, c E-15 ("the *Act*"). The increased amounts in issue were $4230.51 for the 2010 reporting period and $1860 for the 2011 reporting periods (the "Reporting Periods"). The Minister also denied $3517 of Input Tax Credits ("ITCs") claimed in 2010 and $5475 of ITCs claimed in 2011 (collectively referred to as "the Assessments").

[3] The Appellant appealed the matter to this Court to determine the following issues:

i) Whether the Minister correctly assessed the GST collected/collectible for the periods before the Court;
ii) Whether the Minister correctly assessed the Appellant's ITCs for the reporting period;

iii) Whether the Minister properly assessed gross negligence penalties against the Appellant per section 285 of the *Act*.

[4] At the outset of trial, the Respondent conceded that the Appellant was entitled to an additional $246 in ITCs for 2010 and $158 in additional ITCs for 2011.

II. FACTS

[5] The Appellant's sole shareholder is Mr. Mark Hanson ("Mr. Hanson"). Mr. Hanson was the driving force of the business of the Appellant on a day to day basis, running the corporation from his home. Mr. Hanson did much of the ground work on behalf of the Appellant, occasionally hiring others to help when necessary. He also did all the invoicing and receipting on behalf of the Appellant, making use of an accountant and bookkeeper when necessary.

[6] Mr. Hanson testified that he had very limited knowledge as to how to properly prepare accounting records, and had no idea about corporate tax matters, such as the filing of T2s or properly accounting for and remitting GST.As such, his evidence shed very little light on the matter before the Court.

[7] During the course of Mr. Hanson's testimony, he provided no detail on the total sales of the Appellant in either 2010 and 2011. He also did not provide evidence regarding the proper amounts that should have been collected and remitted by the Appellant for GST purposes.

[8] Concerning the ITCs in issue, the Appellant did not identify the ITCs that were denied, and did not call any evidence as to why Hide and Seek would have been entitled to the ITCs that the Minister denied.

[9] The underlying assumptions of the Assessments made by the Minister before the Court were, in part:

1. For the Reporting Periods, the Appellant had sales of no less than:

    a. $156,822.33 for the period ending December 31, 2010; and

    b. $126,891.55 for the period ending December 31, 2011;

2. For the Reporting Periods, the Appellant had GST/HST collected/collectible in the amounts of no less than:

    a. $13,329.90 for the period ending December 31, 2010; and

    b. $15,266.99 for the period ending December 31, 2011;

3. For the Reporting Periods, the Appellant had ITCs of no more than:

    a. $4,216.55 for the period ending December 31, 2010; and

    b. $5,886.07 for the period ending December 31, 2011.

[10] The Respondent called Canada Revenue Agency ("CRA") auditor Denise Eaton ("Ms. Eaton") as their only witness. Ms. Eaton explained how the total revenue for GST purposes was calculated by the Minister. She also testified as to how the Minister calculated the amount of ITCs which were allowed as part of the assessment. Finally Ms. Eaton confirmed that in preparing for trial she corroborated the Minister's GST assessment in issue, using the Appellant's own accounting records, which the CRA had in their possession in electronic form.

III. LAW AND ANALYSIS

[11] The burden of proof is on a balance of probabilities and the taxpayer has an onus to rebut the assumptions of the Minister, as explained at length by the Supreme Court of Canada in *Hickman Motors Ltd v R*.[1] While income tax was at issue in *Hickman*, these principles have been applied to GST proceedings as well.[2] Placing the burden on the taxpayer simply requires the person with the best knowledge of the facts underlying the assessment to disprove the allegations.[3]

[12] The Appellant disputes the Minister's calculations. But there is simply not enough evidence provided to overturn the assumptions underlying the Assessments. Furthermore the evidence of the CRA witness supports the Assessments, and her evidence was not challenged in a meaningful way.

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[1] *Morrison v. The Queen* 2018 TCC 220, at para 68, 298 A.C.W.S. (3d) 439 [*Morrison*], citing *Hickman Motors Ltd v. R* [1997] 2 S.C.R. 336; [1998] 1 C.T.C. 213 [*Hickman*].
[2] See *Amiante Spec Inc. v. Canada*, 2009 FCA 139; 186 ACWS (3d) 279; and *Pro-Poseurs Inc. v. Canada*, 2012 FCA 200.
[3] *Sarmadi v. Canada* 2017 FCA 131, at para 62, [2018] 2 C.T.C. 99 [*Sarmadi*].

Therefore, Mr. Hanson failed to disprove the assumptions made by the Minister in the Assessments.

[13] The test for the application of penalties is laid out in subsection 285.1(16) of the *Act* and explicitly places the burden of proof on the Minister. Per section 285 of the *Act*, the onus is on the Respondent to show that the Appellant knowingly made a false statement or omission on their return, or that in the circumstances; the statements made by Appellant on the returns at issue were grossly negligent.

[14] The Respondent in their submissions argued that the basis for applying penalties due to negligence can be found in poor maintenance of the books and records of the taxpayer; citing *Développement Priscilla Inc. v. The Queen*[4].

[15] In cross examination Mr. Hanson stated that he kept proper books and records for ITC purposes. Other than that evidence, and a brief reference to the books and records by Ms. Eaton, I have no evidence to evaluate the books and records kept by the Appellant. No books and records were put before me by either party. No descriptions of deficiencies in the books or records were provided by the Respondent. As such, the Respondent has not met their onus as required by the *Act* and penalties will not be assessed against the Appellant.

[16] The Appeal is therefore allowed, based on the concessions made by the Respondent at the outset of trial. The Appellant is entitled to an additional $246 in ITC's for the 2010 period and an additional $158 in additional ITC's for the 2011 period. The remainder of the Appeal is denied. Both parties shall be responsible for their own costs.

Signed at Ottawa, Canada, this 5th day of November 2019.

"R. MacPhee"

MacPhee J.

[4] 2007 TCC 728, [2007] G.S.T.C. 181.

CITATION:	2019 TCC 251
COURT FILE NO.:	2018-1426(GST)I
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APPEARANCES:

Counsel for the Appellant:	Corine LeBourdais
Counsel for the Respondent:	Keelan Sinnott

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
For the Respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada