Docket: 2018-346(IT)I

BETWEEN:

HAROLD PEACH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 23, 2019 at St. John's, Newfoundland

Before: The Honourable Justice K.A. Siobhan Monaghan

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Cynthia Isenor

JUDGMENT

In accordance with the attached Reasons for Judgment:

The appeal from a reassessment made under the *Income Tax Act* in respect to the Appellant's 2011 taxation year is allowed, and the reassessment is referred back to the Minister for reconsideration and reassessment on the basis that:

1. Mr. Peach's taxable capital gain from the disposition of the Bishop's Place property to his son is $14,437;

2. Except as stated in paragraph 1, Mr. Peach's income for 2011 as assessed by the Minister and reflected in the reassessment dated January 5, 2018 shall not be adjusted; and

3. Each party will bear their own costs.

Signed at Vancouver, British Columbia, this 23rd day of January 2020.

"K.A. Siobhan Monaghan"

Monaghan J.

Citation: 2020 TCC 12
Date: 20200123
Docket: 2018-346(IT)I

BETWEEN:

HAROLD PEACH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Monaghan J.

I. INTRODUCTION

[1] Harold Peach lives in Salmon Cove, Newfoundland and Labrador. In 2011, he owned several properties that he rented to his sons. He also tried to sell life insurance and mutual funds under the name Harold's Financial Services ("HFS"). In 2011, Mr. Peach claimed significant losses associated with these two activities. He also transferred one of his rental properties to a son. However, he did not report that disposition on his tax return and did not report a capital gain or capital loss in connection with the disposition.

[2] The Minister reassessed Mr. Peach's 2011 taxation year to (i) reduce Mr. Peach's business loss by approximately $15,000, (ii) remove the rental revenue and all associated expenses from his income and (iii) add a taxable capital gain to his income in respect of his disposition of the rental property to his son. Mr. Peach has appealed that reassessment to this Court.

[3] The Minister reduced Mr. Peach's business loss on the basis that many expenses Mr. Peach deducted in computing his income from the HFS business were not incurred for the purpose of earning income or were not reasonable. Mr. Peach does not agree and suggests the Minister is attempting to substitute her business judgment for his. Secondly, while Mr. Peach considers the rental

properties to be a source of income, the Minister does not. Finally, the Minister asserts the property Mr. Peach transferred to his son had a fair market value in excess of its adjusted cost base and the amount his son paid such that Mr. Peach realized a capital gain. While Mr. Peach agrees the property was transferred to his son, he claims he did not realize a capital gain as a result.

II. PRIOR TAXATION YEARS

[4] This is not Mr. Peach's first appearance before this Court in connection with expenses claimed in respect of his rental properties and his business. The Minister reassessed Mr. Peach's 2009 and 2010 taxation years on the basis that the rental properties were not a source of income and that the expenses he claimed in respect of his HFS business were not reasonable. Mr. Peach objected to and ultimately appealed those reassessments to this Court which concluded that Mr. Peach's rental activities in 2009 and 2010 were predominantly personal and did not amount to a source of income.[1] The Federal Court of Appeal agreed with that determination.[2]

[5] With respect to expenses Mr. Peach deducted in computing income from his business in his 2009 and 2010 taxation years, this Court initially determined that expenses in excess of the commissions Mr. Peach earned were not reasonable. However, the Federal Court of Appeal expressed concern that the trial judge had considered the business expenses on a global basis rather than having had regard to the particular expenses and Mr. Peach's explanation for them. Accordingly, the Federal Court of Appeal referred the matter back to this Court to reconsider the reasonableness of Mr. Peach's business expenses in 2009 and 2010. However, the Federal Court of Appeal was clear that unreasonable expenses may be eliminated or reduced to reasonable amounts. On reconsideration, many (but not all) of the expenses Mr. Peach claimed in computing his income from his business in those taxation years were determined to be unreasonable.[3] This Court allowed expenses

[1] 2013-4425(IT)I, Oral Reasons delivered September 9, 2014.

[2] 2016 FCA 173.

[3] 2017 TCC 40.

of $4,249 in 2009 and $3,694 in 2010.[4] In those years Mr. Peach's revenue from HFS was $1,052 and $681, respectively.[5]

[6] Respondent's counsel suggests that because the Federal Court of Appeal agreed with this Court's finding that Mr. Peach's rental activities are not a source of income, that was sufficient to dismiss Mr. Peach's appeal of the reassessment of the 2011 taxation year insofar as it relates to his losses from rental activities. However, Mr. Peach submits that he has better evidence this time, evidence he did not have at his prior appeal, and that the facts in 2011 are different.

[7] As to the business expenses, counsel for the Respondent points out that the 2011 reassessment under appeal was based on the Minister's interpretation of this Court's decision regarding the reasonableness of expenses in Mr. Peach's 2009 and 2010 taxation years. She suggests the Minister has allowed reasonable expenses resulting in a loss of approximately $3,700. Mr. Peach disagrees that all of the expenses denied by the Minister in 2011 were properly denied.

[8] While the decisions of the Federal Court of Appeal and this Court in Mr. Peach's prior appeal are relevant, I agree with Mr. Peach that they are not determinative. The appeal relating to his 2011 taxation year is a separate appeal. Accordingly, if Mr. Peach has evidence that distinguishes 2011 from 2009 and 2010, I may be convinced that the findings in 2009 and 2010 do not apply to 2011, and reach a different conclusion. Moreover, in the prior appeal, the Minister issued the reassessments within the normal reassessment period. That is not the case for the reassessment of 2011.

[9] The first assessment for 2011 carries a March 15, 2012 date. The Minister reassessed Mr. Peach by notice dated August 11, 2015, and therefore after the normal reassessment period for 2011. Following Mr. Peach's objection to the 2015 reassessment, the Minister issued a second reassessment dated January 5, 2018. This 2018 reassessment is the subject of Mr. Peach's appeal. The normal reassessment period does not apply to the 2018 reassessment because it was issued after Mr. Peach's objection to the 2015 reassessment.[6]

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[4] *Ibid*, at paragraph 14.

[5] *Supra*, note 1 at page 3.

[6] See subsection 165(5) of the *Income Tax Act* (Canada).

[10] In his notice of objection, Mr. Peach did not point out that the August 11, 2015 was issued after the normal reassessment period. He raised that for the first time on appeal of the 2018 reassessment to this Court. Nonetheless, if a reassessment issued beyond the normal reassessment period is not valid, a second reassessment issued after a notice of objection to that first invalid reassessment is similarly not valid.[7] Mr. Peach may raise the validity of the second reassessment in this appeal and the Respondent bears the onus of establishing that the Minister was entitled to issue that reassessment after the normal reassessment period.

III. 2011 TAXATION YEAR

[11] Accordingly, there are four issues in this appeal:

1. In 2011, were Mr. Peach's rental properties a source of income requiring him to include in income the rental payments he received and entitling him to deduct expenses he claims to have incurred in connection with the rental properties?

2. Are any of the expenses that the Minister disallowed in computing Mr. Peach's income from his business deductible by Mr. Peach in his 2011 taxation year?

3. Did Mr. Peach realize a taxable capital gain on the disposition of a property located at 16 Bishop's Place in St. John's to his son and, if so, was the amount of the taxable capital gain correctly computed by the Minister in the reassessment issued to Mr. Peach?

4. Was the Minister entitled to reassess Mr. Peach for the 2011 taxation year beyond the normal reassessment period for that year? This requires me to decide:

    a) Whether Mr. Peach made misrepresentations in his 2011 tax return regarding the three matters raised by the reassessment; and

[7] *The Queen* v. *Anchor Pointe Energy Ltd*. 2003 DTC 2003 (FCA); *943372 Ontario Inc*. v. *The Queen* 2007 TCC 294; and *Klemen* v. *The Queen* 2014 TCC 244.

b) If he did make misrepresentations, whether those misrepresentations were attributable to neglect, carelessness or wilful default.[8]

IV. RENTAL PROPERTIES

[12] In 2011 Mr. Peach owned, or co-owned with his wife, three properties: 21 Ryan's Lane, Brigus Junction; 36 Riverside Drive, Salmon Cove and 16 Bishop's Place, St. John's. With the exception of Ryan's Lane, purchased in December 2011, the same rental properties were in issue in Mr. Peach's prior appeal.

[13] The property in Salmon Cove is the home where Mr. and Mrs. Peach reside, although it has a separate one-bedroom basement apartment. In 2011, Mr. Peach permitted one son to occupy a bedroom in the part of the house where he and his wife live, and gave that son use of the common areas and laundry facilities, for rent of $300 per month. This arrangement prevailed from January to June 2011. Another son rented the basement apartment for $350 per month for the period from January to April 2011. Bishop's Place was rented to a son for $550 per month commencing June 1, 2011. In each case, the rent paid by Mr. Peach's sons included all utilities. As is discussed below, Mr. Peach and his wife transferred ownership of the Bishop's Place property to their son in August 2011, so the $550/month rent was for a very short time.

[14] In order to constitute a source of income, the properties must be rented in pursuit of profit, and not constitute a personal endeavour. In Mr. Peach's prior appeal, this Court was satisfied that the rental arrangements between Mr. Peach and his sons in 2009 and 2010 had "clear and considerable personal elements to them".[9] While Mr. Peach's reasons for his preference to rent to his sons were perfectly "acceptable and understandable", the rental properties "were simply a personal endeavour undertaken without the needed pursuit of profit" to constitute a

[8] There is no suggestion that Mr. Peach committed fraud in filing his 2011 tax return.

[9] *Supra*, note 1 at page 12.

source of income.[10] The Federal Court of Appeal was satisfied that the trial judge did not err in reaching that conclusion.[11]

[15] Mr. Peach's arrangements for these properties in 2011 are the same as the arrangements considered by this Court in respect of his 2009 and 2010 taxation years, with the exception that, prior to June 1, 2011 the Bishop's Place property had been rented for $350 a month and the room in his personal residence was rented only in 2010. In the earlier appeal, the rental properties were determined not to be a source of income. Mr. Peach claims he has evidence for 2011 that establishes that these properties were a source of income in 2011.

[16] The only new evidence Mr. Peach presents with respect to these properties were appraisals he obtained. He explained that, in his prior appeal, the Respondent had appraisals, but he did not. This time he decided to obtain his own appraisals to rebut the CRA appraisals. Unfortunately, Mr. Peach's appraisals do not help his case. Firstly, each of them is an appraisal of the fair market value of the property in question, with reference to comparable sales. They are not an assessment of fair market rents for the properties. Mr. Peach has to demonstrate that he was pursuing a profit in renting the properties to his sons.

[17] In the context of the question of fair market rents, each of Mr. Peach's appraisals contains a statement like the following: "Market rent for the area in 2011 ranged from $[appropriate number] to $[appropriate number] per month p.o.u." (i.e., plus own utilities). But they contain no analysis or explanation of the basis or source of the statement regarding rental rates or the assumptions underlying it. The only analysis relates to comparable sales of properties. Mr. Peach did not call the appraiser as a witness to explain where the information regarding market rent came from.

[18] In contrast, the stated purpose of the CRA reports for each of these properties is to identify a fair market rental value. In making that assessment, the CRA reports consider vacancy rates, market data for comparable rentals where available, and other factors where considered appropriate, such as a cost and income analysis. The CRA reports expressly outline the underlying assumptions and limitations and, while they caution they are not appraisals, given their content

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[10] *Ibid*, at page 13.

[11] *Supra*, note 2 at paragraph 3.

and stated purpose, they are more persuasive and clearly more appropriate for analyzing appropriate rental rates than the appraisals submitted by Mr. Peach.

[19] For example, the CRA report related to the one-bedroom basement apartment in Salmon Cove identifies five one-bedroom units for rent in the Salmon Cove area, including one in Salmon Cove, with rents varying between $500 and $600 per month. On that basis, the CRA appraiser suggests a fair market value rental for Mr. Peach's basement apartment in Salmon Cove would be $500-$550 per month, plus utilities. Although Mr. Peach suggests that rate is too high, he has no persuasive evidence to support that claim. His appraisal states rental rates in the area were $400-$500 per month plus utilities. Mr. Peach claims that statement refers to rent for the whole house, not a basement apartment. That is not evident from the appraisal itself and is inconsistent with the CRA report which refers to specific one-bedroom rental comparables. But most importantly, Mr. Peach's appraisal suffers from being an appraisal of the wrong thing – the fair market value of the property not the rental value. Mr. Peach's appraisal contains no assumptions, facts, analysis or research to explain the statement it contains regarding market rents in the area. It is not of a quality that rebuts the CRA report.

[20] In view of CRA's analysis of specific other rental properties in the area, and the weakness of the appraisals tendered by Mr. Peach, I accept that in 2011, as in 2010, $350 per month including utilities (at least 30% below the CRA's determination of fair market rent[12]) for the basement apartment was below market rent. As to the space in the main residence rented to another son, I am satisfied Mr. Peach would not have provided the same space to anyone other than his son (or perhaps another very close relative). Indeed, Mr. Peach conceded that were his son unable to pay rent, he would allow him to live with Mr. Peach and his wife.

[21] In my view, these arrangements reflect two sons agreeing to help out with the costs of maintaining and running the home, given that they continued to reside there as adults, and two parents being happy to provide accommodation to their adult sons at below market rates because they are their sons.

[22] As to Bishop's Place, the CRA report suggests fair market rental rates for Bishop's Place would be in the $850-$900 range per month, with tenants paying utilities. Mr. Peach's appraisal for Bishop's Place suffers from the same weakness

[12] Using $500 per month and excluding any additional rent that appropriately could be charged because utilities are included.

as his appraisal for the Salmon Cove property, in that its focus is fair market value of the property. But, even if it did not, it simply does not support Mr. Peach's contention that the rent he charged was fair market rent because his appraisal suggests monthly rentals of $650-$750 per month, plus utilities. Mr. Peach charged his son only $550 per month, including utilities, an amount less than the lower end of the market rental rates in both appraisals. Mr. Peach also appears to have been supplying at least some furniture for Bishop's Place since his list of expenses for that property includes a mattress, bedding, and closet coat hangers. A furnished rental property normally would cost more than an unfurnished property. Finally, the $550 per month only commenced on June 1, 2011. While this was more than the $350 per month Mr. Peach charged in prior years, I am satisfied it nonetheless remains below fair market value rent.

[23] In conclusion, none of the evidence Mr. Peach tendered with respect to the Salmon Cove and Bishop's Place properties suggests that these properties were a source of income, and that the conclusion reached in his prior appeal in that regard would not continue to apply in 2011. These arrangements do not reflect pursuit of profit.

[24] This leaves Ryan's Lane, a property Mr. Peach acquired in 2011 and therefore not considered in his prior appeal. Because the Ryan's Lane property was acquired on December 11, 2011, it was rented only for one week in 2011, to his son. The agreed rental rate was $1,000 per month including utilities, so his total rent in 2011 was $250. The Minister's appraiser determined an appropriate rental rate would be in excess of $1,100 a month plus utilities. Mr. Peach's appraiser suggested rents of $600-$800 per month plus utilities, but, as with the other appraisals, the statement is made without any supporting analysis or explanation. Again, the appraisal's objective is to appraise the fair market value of the property, with reference to sales prices of comparable properties. Mr. Peach's appraisal certainly does not demolish the Minister's assumption regarding fair market rental rates.

[25] The purpose of the CRA report for Ryan's Lane is to determine a fair market rental. The CRA report expressly acknowledges the difficulty in assessing fair market rents because cottages in that area rarely are acquired for investment purposes. But, even if I accepted the rates in Mr. Peach's appraisal, they too suggest he was charging below market rent because the rent he charged included utilities. The electricity bills for the period December 12, 2011 to November 27, 2012 indicate electricity cost was approximately $2,335, or an average of $195 a month; the propane tank rental was $11 per month. Adding $206 per month to the

top of the range suggested by Mr. Peach's appraiser, admittedly a range without analysis or support, suggests a rent in excess of $1,000 per month. And that does not take into account Mr. Peach's costs associated with the installation of the propane tank and the purchase of propane (heat). Mr. Peach also had mortgage costs on borrowing in excess of $200,000, annual insurance premiums of $1,084, and other maintenance costs. Mr. Peach's evidence did not persuade me that this property is of a different nature than the others he rented to his sons. I find that this property, like the others, was not a source of income in 2011.

[26] In conclusion, despite his suggestions to the contrary, in my view, in 2011 Mr. Peach was not pursuing a profit from the three properties. Rather, the arrangements were dominated by personal relationships and the endeavour was a personal one. To put it simply, I agree with Justice Bocock that in 2011, as in 2009 and 2010, these properties "were simply a personal endeavour undertaken without the needed pursuit of profit and any revenue or expenses related to the rental properties were not received or expended from a source of income".[13] Accordingly, I find that the rental properties were not a source of income in 2011.

V. FINANCIAL CONSULTING BUSINESS

[27] Mr. Peach has operated HFS since 1999. The stated objective of this business is to sell mutual funds and life insurance. Mr. Peach did not carry on business on a full-time basis in any of 2009, 2010 or 2011. Although Mr. Peach commenced HFS in 1999, he has never earned a profit. In no taxation year since he started HFS has he had revenues in excess of $1,900 and in nine of those years he had revenues of less than $800.[14] In every year, his expenses have exceeded revenues by a substantial amount. His smallest loss was $2,501, realized in 1999, the year he commenced HFS. His biggest claimed loss is in 2011.

[28] In 2011, Mr. Peach gained no new clients for HFS and earned one $27 commission. He said that commissions are earned at the rate of 1.5% of the premiums for the product sold, meaning that in 2011 he sold one product for $1,800. Mr. Peach could not recall whether a client updated a prior purchase or purchased a new product but confirmed that in 2011 he had no new clients. Despite this small revenue, in computing his income from this business in 2011, Mr. Peach

[13] *Supra*, note 1 at page 13.

[14] Schedule A to the Reply.

deducted expenses in excess of $19,600. In comparison to his $27 commission, the expenses claimed are staggering – a multiple of more than 720 times his commissions. At the lowest point of revenue,[15] his claimed expenses reached their highest ever.

[29] In reassessing Mr. Peach, the Minister allowed Mr. Peach to deduct expenses of $3,715, resulting in a loss from the business of $3,688. The Minister disallowed $15,951 in expenses on the basis they were not incurred for the purpose of earning income or were not reasonable in the circumstances.

[30] In Mr. Peach's prior appeal, losses from HFS were also in issue but it was then accepted that HFS was a business.[16] The focus of that appeal was the reasonableness of the expenses. In this appeal, the Respondent again does not dispute that HFS is a business but asserts that some of the disallowed expenses both were not incurred to earn income from HFS and were not reasonable.

[31] Mr. Peach described his business activities in 2011 as they related to HFS. Mr. Peach was in Rankin Inlet, where he worked as a guidance counsellor, for about 7 months during 2011. He was in Newfoundland for part of March, June, August, and November, and all of July and December.[17]

[32] While in Rankin Island, he made telephone calls and sent emails to existing clients. This activity took about 10 hours a month. While in Newfoundland, he would spend more time on the HFS business. While he also contacted clients by telephone and email while in Newfoundland, he sometimes visited clients or potential clients in their homes. This, he said, explained his high travel costs as his clients were not in Salmon Cove.

[33] Mr. Peach described his client base as being about 35 people, two-thirds of whom were family and long-time friends. While in 2011 he gained no new clients and spent very little time on the business, Mr. Peach claims he drove almost 4,600 kilometres for HFS, many of these trips being from his home in Salmon

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[15] The next lowest revenue was in 1999 but it was more than 13 times greater than 2011.

[16] See para 4 of the FCA decision, *supra*, note 2.

[17] Although he typically was in Rankin Inlet in November as well, in November 2011 he returned to Newfoundland because he needed cataract surgery, and stayed through Christmas to the end of 2011.

Cove to St. John's, and a number of them being for meetings or training at the St. John's branch office of the organization he was affiliated with.

[34] Given the very limited activity related to HFS in 2011, the fact that Mr. Peach was also occupied with his four properties and his job in Rankin Inlet, and that two-thirds of his clients were family and long-term friends, it is not clear to me that Mr. Peach really continued to carry on the HFS business in 2011 with any effort or that the motivation for calls and visits had not become a predominantly personal endeavor. However, that issue is not before me as the Minister accepts that Mr. Peach carried on a business in 2011 and therefore allowed expenses of approximately $3,715. Accordingly, I have proceeded on the basis that HFS was a source of business income and that the only question I am to consider is whether any portion of the expenses disallowed by the Minister are deductible by Mr. Peach in computing his income from the HFS business. Mr. Peach bears the onus of establishing they are reasonable and were incurred for an income earning purpose.

[35] Mr. Peach's expenses for HFS include significant meals and entertainment expenses, travel expenses, office expenses, motor vehicle expenses and capital cost allowance on vehicles. As noted, the Respondent has contended that some of these expenses were personal. At the hearing Mr. Peach was asked to explain the business rationale for a number of expenses and was unable to do so. In this category, the following evidence is relevant:

Purchase of an ipod – Mr. Peach could not remember or explain how that was related to HFS.

Books and an Irewards renewal fee – Mr. Peach had no explanation for these expenses.

Purchase of a telephone – Mr. Peach could not remember or explain how this expense related to HFS.

Payment of a CBSA import fee – Mr. Peach could not remember or explain how the import fee was related to his business; he agreed he had no clients outside Canada.

ExpressPost to his wife – Mr. Peach could not recall the purpose of this mailing, although he thought he might have sent materials to his wife to have her pass them on to his clients. I did not find this explanation very convincing,

particularly since his travel log suggests most of his clients were not in Salmon Cove. Again, I am not satisfied this expense related to HFS.

ExpressPost to his daughter in Brampton (more than once) – Mr. Peach said his daughter was a client but he could not recall what was sent to her and agreed she purchased nothing from him in 2011. I am not satisfied that these mailings were for business rather than personal reasons.

ExpressPost to Montreal – Mr. Peach could not explain how that was related to HFS. He admitted he had no clients in Montreal.

[36] I am satisfied on a balance of probabilities that most of the above expenses were personal and not incurred for purpose of earning income from the HFS business. However, notwithstanding that, the Minister allowed all of the office expenses claimed by Mr. Peach (including the expenses described above) and I am not able to disturb that decision if it would result in an increase in Mr. Peach's income.[18]

[37] I am also concerned that some of the other expenses incurred by Mr. Peach were personal, rather than business expenses. In particular, Mr. Peach spent more than $200 on a category of expenses which included birthday cards, birthday cakes, children's t-shirts, tickets to a Christmas show, ice-cream and alcohol. When questioned about the business rationale of these expenses, Mr. Peach said they were gifts to clients and their children to show appreciation. However, Mr. Peach could not remember who he gave the gifts to. Given that two-thirds of his client base is family and long-time friends, that he earned only one $27 commission in 2011 from an existing client, that he gained no new clients in 2011, and the nature and size of these gifts, I believe these gifts were motivated primarily by personal relationships rather than business considerations. I am satisfied on a balance of probabilities that these expenses were not incurred for the purpose of earning income. But if they were incurred for an income-earning purpose, they were not reasonable.

[38] As to the other expenditures, the broad categories of expense are meals, travel, office expenses, and vehicle expenses, categories that are not obviously non-deductible. In my view, a number of the claimed expenses likely were personal expenses, not incurred for business purposes. However, with the

[18] See *Harris* v. *The Queen* [1964] CTC 562 (Ex. Crt), aff'd [1966] SCR 489 and *Petro-Canada* v. *The Queen* 2004 FCA 158.

exception of Mr. Peach's testimony regarding the specific expenses noted above, Mr. Peach focussed more on categories of expenses rather than details of particular expenses. As a result, I have limited my analysis of these other expenses to determining whether they were reasonable.

[39] Section 67 of the *Income Tax Act* (Canada) (the "Act") provides that an expenditure incurred for the purpose of earning income may be reduced or eliminated to the extent that it is not reasonable in the circumstances. The Respondent suggests that a significant number of Mr. Peach's expenditures are unreasonable in Mr. Peach's circumstances.

[40] To determine the extent, if any, to which an expenditure incurred by Mr. Peach exceeded a reasonable amount, I must review the evidence relevant to the HFS business and to those expenses. My findings of fact are based on Mr. Peach's testimony and the various documents adduced in evidence at the hearing. In particular, I note the following:

- Mr. Peach was in Rankin Inlet for about 7 months of the year, during which time he said he spent 10 hours a month on emails and phone calls. His business activity was very part-time and this activity would not reasonably require any meaningful expenditures.
- During the 5 months he was in Newfoundland, Mr. Peach testified he spent more time on HFS than when he was in Rankin Inlet but was not very specific about how much more time he spent. Mr. Peach described his activities in Newfoundland as making telephone calls and sending emails and occasionally visiting clients or potential clients personally. Again, it is clear HFS was not a full time occupation.
- Two-thirds of Mr. Peach's clients were family and friends. Even that client base did not purchase any products of any significant value from Mr. Peach.
- Many of Mr. Peach's travel expenses and meal expenses related to trips to St. John's for training and meetings at the branch office, activities that he also carried on in 2009 and 2010.
- Mr. Peach carried on the HFS business for more than a decade before 2011 without ever realizing a profit. His expenses have increased, while his revenues have decreased, significantly and steadily.

- Mr. Peach had no evidence suggesting his business in 2011 be treated more favourably than in 2009 and 2010.

[41] I now will consider the various expenses by category.

A. Meals

[42] Mr. Peach claimed meal expenses of $986 in computing his income from his business activities.[19] The Minister allowed $125 in meal expense. I think this is more than reasonable. Mr. Peach's statement of business income[20] shows that most of the meal expenses were incurred on trips to St. John's for team training or meetings. In my view, it was not reasonable to incur the costs associated with monthly training trips in the months Mr. Peach was in Newfoundland, given the level of Mr. Peach's business activity in 2011. The picture painted by the evidence is of a business in wind-down mode. I am skeptical that five trips to the St. John's office in December, including one in the week between Christmas and New Year's and one on a Saturday, were necessary or even desirable, but I am satisfied it was not reasonable to incur the expense to attend them. I suspect these trips to St John's were motivated as much by personal relationships or obligations as business, particularly as it seems clear that Mr. Peach was buying meals for other people on these trips (in some cases several people) and claiming them as business expenses.[21] But regardless, it is not reasonable to spend hundreds of dollars on meals to earn a $27 commission.

B. Travel

[43] Much of the travel expense Mr. Peach incurred relates to trips to St. John's. Each of these trips is apparently 240 kilometers return. Most of the kilometers driven were in connection with team meetings and training at the branch office. One trip was to write a report.[22] I have already concluded that incurring expenses for these trips in excess of any expenses allowed by the Minister is unreasonable. Mr. Peach did not explain the purpose of the training. As to the team meetings,

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[19] Reply Schedule B.

[20] See Exhibit A-14.

[21] See Exhibits R-2 and A-14 and the discussion below under Normal Reassessment Period.

[22] December 7, 2011 per Exhibit A-14.

while not discussed in any detail at the hearing, again incurring the expense to travel to St. John's twice a month for a meeting is not reasonable in Mr. Peach's circumstances. The level of activity for his business, his absence from Newfoundland for much of the year, and his lack of any meaningful success in this business in the preceding decade, in my view makes it unreasonable to incur these travel costs. Travel to St. John's to write a report is in my view obviously unreasonable, particularly since Mr. Peach had a home office and a laptop. Mr. Peach was not devoting sufficient time to the business to warrant these expenses. No commercially minded business person would act this way in similar circumstances. It is worth noting Mr. Peach did not attend meetings in person 7 months of the year.

[44] As to visits to clients and potential clients, Mr. Peach admitted he had no record of who he called or emailed, or who he visited. I am concerned that travel to the homes of clients who are family or long-term friends was motivated by personal relationships far more than business considerations. Mr. Peach claimed he was able to maintain client relationships through email and telephone calls for most of the year while in Rankin Inlet. Given this, his lack of success in gaining new clients or meaningful revenue from existing clients even though they were mostly family and friends, in my view it was not reasonable to incur travel costs in the hope of gaining new business given his experience over the preceding decade.

[45] Moreover, I cannot help but observe that many of the places Mr. Peach claimed to have travelled for meetings with clients or potential clients were places he travelled to in connection with his properties or had personal connections such as family. And yet, Mr. Peach seemingly made no effort to economize on the travel by using a single trip to achieve more than one purpose. For example, he claims to have travelled to Victoria on August 2 for HFS for a meeting with a potential client[23] and on August 3 he claims to have travelled to Victoria again in relation to the Salmon Cove property. No reasonable business-person would travel to the same location twice in two days to meet with a potential client one day and to purchase a wax seal for $1.57 the next day. Mr. Peach's business activities do not warrant that kind of expenditure.

[46] Admittedly, much of Mr. Peach's evidence related to the properties he owned. However, Mr. Peach bore the onus of establishing that the Minister's

[23] He also claims to have travelled to St. John's on August 2 to purchase cleaning supplies for 16 Bishop's Place, a place he rented to his son. See Exhibit A-14.

assessment is incorrect.[24] In my view, he did not meet that onus. Mr. Peach could not identify any of the potential clients. The records he had were entirely inadequate. The number of trips he claimed to have made in his travel log to meet clients and potential clients is inconsistent with his oral testimony regarding the time he was spending in meetings and indicate travel to different places on the same day. In my view, given the description of his overall activities in 2011 insofar as they related to HFS, even if substantiated, the travel expenses were not reasonable.

C. Automobile Expenses

[47] The same analysis applies to Mr. Peach's capital cost allowance, repairs, maintenance and gasoline expenditures. I am far from satisfied all of the trips Mr. Peach claims he made for HFS were in fact made in relation to HFS business, but in any event incurring expenses in connection with the cars (including his wife's car and a car driven by his son) for this purpose was not reasonable. As noted above, if Mr. Peach could conduct his business by phone and email for 7 months of the year, it was not reasonable for him to incur expenses to travel in the part of the year he was in Newfoundland, in the context of virtually no revenues. As noted above, this is not one bad year in the context of an otherwise successful business. Mr. Peach has never had a profit and his revenues in the recent years have shown a rapid decline. Faced with his history, it is not reasonable to incur these expenses.

D. Office Expenditures

[48] The Minister allowed $671 in respect of office expenditures. In my view, in the circumstances, this was more than reasonable.[25]

[49] In conclusion, I am satisfied that any expense Mr. Peach incurred for the purpose of earning income from HFS, in excess of the expenses allowed by the Minister, is unreasonable and therefore not deductible. I want to be clear that I am not basing this conclusion on any judgment about Mr. Peach's business judgment. Rather, I am satisfied that no commercially-minded business person would

[24] Leaving aside the issue of the validity of the reassessment discussed below.

[25] This is slightly more than was allowed in the prior appeal and as noted above I believe some of the allowed expenses were in fact personal.

continue to incur expenses in the amounts Mr. Peach claims to have done year after year, were such business person in Mr. Peach's circumstances.

VI. CAPITAL GAIN

[50] In August 2011, Mr. Peach and his spouse transferred ownership of 16 Bishop's Place to their son, William Peach, who had been occupying it with his wife and had paid Mr. Peach some rent. Mr. Peach did not report the disposition of this property in his tax return for 2011. Mr. Peach does not dispute that his son acquired the property, but does dispute that he realized a capital gain on the disposition.

[51] Because Mr. Peach and his son do not deal with each other at arm's length,[26] for purposes of computing his income, Mr. Peach is deemed to have received proceeds of disposition for the property equal to the greater of the amount his son paid him for it and the fair market value of the property at the transfer time.[27]

[52] In the reassessment under appeal, the Minister assumed that the property's fair market value was $160,000. Although the initial reassessment assumed a fair market value of $170,000 and that Mr. Peach was the sole owner of the property, following Mr. Peach's objection, the proceeds were reduced to $160,000 and the Minister agreed that Mr. Peach should be taxable on only one-half of the taxable capital gain because his spouse co-owned the property.

[53] The Minister also assumed that Mr. Peach's son paid his parents $1.00 as consideration for the transfer of the property to his son in 2011. Mr. Peach has convinced me that his son borrowed sufficient funds to pay the $75,345.77 balance owing by Mr. and Mrs. Peach under a mortgage secured on the property, so that the consideration actually received by Mr. Peach was $37,673.39 (being 50% of the total paid by his son). However, that alone does not help Mr. Peach because that amount is also significantly less than the fair market value of the property as determined by the Minister (i.e., $160,000 for the entire property and $80,000 for Mr. Peach's 50% interest).

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[26] Mr. Peach and his son are related persons as defined in subsection 251(2) of the Act and therefore are deemed not to deal with each other at arm's length (see paragraph 251(1)(a) of the Act).

[27] See paragraph 69(1)(b).

[54] Mr. Peach contends that the fair market value of the property in 2011 was substantially less than $150,000. However, other than his opinion, he had no evidence to substantiate that claim. In fact, the independent evidence he has supports, rather than rebuts, the CRA's assumption regarding fair market value. The appraiser Mr. Peach engaged concluded the fair market value of the property in 2011 was in the range of $150,000 to $165,000. Mr. Peach does not accept that appraisal. He criticized both appraisals (his own and the CRA's) because neither appraiser had access to the property for purposes of assessing value and the appraisals occurred several years after the taxation year in question. Mr. Peach said that, at the transfer time, the property needed work and was not in good shape and that he would have been happy to have anyone take the property off his hands for the same amount as his son did.

[55] Mr. Peach's criticisms of the appraisals are not persuasive in the absence of any other evidence. He engaged his appraiser. Any facts that he thought relevant to the appraisal, or not properly understood by the appraiser, should have been put to that appraiser before the appraisal was finalized. Mr. Peach does not assist this Court where he tenders an appraisal report that supports the Minister's conclusion regarding value and then dismisses it on the basis the appraiser did not have the correct information. Mr. Peach's statement the appraisal is wrong cannot be accepted simply because he says it. He has no expertise in valuation. He had no evidence regarding the condition of the property other than his statements. He had no pictures, no purchase orders and no invoices regarding repairs he claims were needed, information he could have provided to the appraiser or this Court. Neither his son nor his daughter-in-law, who occupied and then purchased the property, testified. The appraiser did not testify.

[56] The only other evidence regarding value Mr. Peach presented was the assessed value for municipal property tax purposes. For that purpose, the property had an assessed value in 2010 of $102,000 and $77,600 in 2009. But this evidence does not assist Mr. Peach. Firstly, assessed value for a year may not reflect fair market value for that year. Moreover, the evidence relates to a year that precedes 2011.[28] In fact, one might draw a negative inference from the fact he did not bring information about assessed value in 2011, though it is not necessary for me to do so.

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[28] The increase in assessed value between 2009 and 2010 was $24,400, an increase of more than 30%. Even if assessed value were relevant, it would not be determinative and this Court cannot speculate what the assessed value was in 2011.

[57] As to Mr. Peach's contention he would have allowed anyone to take the property on the same terms, there is no evidence he tried to sell the property to anyone other than his son on the terms he offered his son or otherwise. Mr. Peach said he spoke to a real estate agent about selling it and that the agent discouraged him from doing so because the property needed work. I find that testimony surprising and Mr. Peach has no correspondence with that agent, no emails, and no record of the conversation other than his recollection. He did not call the real estate agent to testify.

[58] The fair market value the Minister used to reassess Mr. Peach falls at the bottom end of the range of values determined by the CRA appraisal report and within the range given by Mr. Peach's own appraiser. Mr. Peach has not persuaded me that the fair market value used by the Minister was incorrect. Thus, for purposes of computing Mr. Peach's taxable capital gain from the disposition of the property, his proceeds of disposition are 50% of $160,000, or $80,000.

[59] Mr. Peach also claims that the Minister understated the adjusted cost base of the property. Mr. Peach and his wife purchased the property in 2006 for $88,500. In reassessing Mr. Peach, the Minister assumed the total adjusted cost base of the property was $99,138.[29]

[60] The listing of adjustments in the Reply includes an adjustment for roof repairs, but not for window replacement. Mr. Peach claims that the adjusted cost base should include his costs of replacing the windows, an expense he incurred in 2007. Mr. Peach provided a copy of a receipt from 2007 for the purchase and installation of windows at a total cost of $3,112.34.

[61] Respondent's counsel contends that Mr. Peach may have deducted this expense in computing his income in 2007, as Mr. Peach has a history of deducting capital expenditures as current expenditures. Mr. Peach did not have his 2007 income tax return with him and admitted that there were things he could not remember from 2011, never mind 2007. He could not state with any certainty that he did not deduct the cost of the window replacement in 2007.

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[29] In my view, some of the items described as additions to adjusted cost base are costs of disposition (e.g. legal fees on disposition and various disbursements related to the disposition). However, nothing turns on that in this case. Whether these amounts are part of adjusted cost base or a cost of disposition does not affect the amount of the capital gain realized by Mr. Peach, because both reduce his capital gain.

[62] Mr. Peach explained that the accountant he had previously engaged for his tax returns had spent some time trying to educate him on the difference between a current expense and a capital expense. He said the accountant told him that the cost of repairs is generally deductible while the cost of replacing something is generally capital.

[63] That is, of course, somewhat simplistic. Characterizing an expense as current or capital is not as simple as deciding whether it is a replacement or a repair. For example, replacing a broken window pane typically would be a repair, even though one would typically describe it as a replacement. The Minister allowed him to add the cost of repairs to his adjusted cost base, accepting presumably that was a capital expense. However, beyond that, the case law establishes that whether an expense is a capital or current expenditure is to be determined based on the purpose for which it was incurred and the circumstances in which it was incurred.

[64] Given all the evidence, Mr. Peach has not satisfied me that he did not deduct the cost of the windows in 2007. On the one hand, I have the receipt for the window and Mr. Peach's testimony that he knows the difference between a capital expenditure and a current expenditure. On the other hand, Mr. Peach does not draw that distinction in computing his income. For example, the list of maintenance and repairs for his rental properties contains the following expenditures that Mr. Peach attempted to deduct: replacement kitchen, replacement refrigerator, bedroom set, bedroom mattress, and water holding tank. The use of the word replacement in Mr. Peach's own document to describe the kitchen and refrigerator is troubling, given his testimony that his understanding of the difference between a non-deductible capital expenditure and a deductible current expenditure turns on the former being a replacement and the latter a repair.

[65] Whether an expense is a current expense or a capital expense is a question that has been addressed by many courts in many contexts. Three general tests have emerged: the recurring or single outlay test, enduring benefit test and the purpose test. However, because expenses may be incurred for many reasons, courts have cautioned that each case must be determined based on its own facts. In characterizing an expense, courts must apply a common sense approach, taking into account the particular facts and circumstances surrounding the expense and considering what the expense is intended to accomplish from a practical and business standpoint.[30] Unfortunately, Mr. Peach did not provide much evidence

[30] *Rio Tinto Alcan Inc*. v. *The Queen* 2016 TCC 172 at para 79, aff'd 2018 FCA 124.

surrounding the rationale or reasons for the window replacement. All he said was that he replaced wooden-framed windows with vinyl-framed windows.

[66] The law is clear that:

> "if an error is made in the assessment of a statute-barred year, which affects another year, the Minister, in assessing the other year, must follow the Act and if there was an error in law in a previous year, including a statute-barred year, that error ought to be corrected so that the assessment for the current year is correct".[31]

[67] Therefore, even if deducted as a current expense in 2007, if the cost of the windows should have been treated as a capital expense and included in his cost of the property, it is to be added to his adjusted cost base in 2011.[32]

[68] I am prepared to find that Mr. Peach has established, but just, on a balance of probabilities that the cost of the windows in 2007 should be included in his cost of the property. Therefore, his adjusted cost base of his interest in Bishop's Place is $1,556 more than the Minister assumed, being 50% of the cost of the window replacement.

[69] Accordingly, Mr. Peach's taxable capital gain in 2011, as computed by the Minister, should be reduced by $778 representing 50% of his share of the cost of the windows. That is, Mr. Peach's capital gain is $28,875, computed as one-half of the difference between (i) the $160,000 fair market value of the property, and (ii) the total adjusted cost base and costs of disposition of $102,250 (being the $99,138 assumed by the Minister plus $3,112 for the windows). As result, his taxable capital gain is $14,437.

VII. NORMAL REASSESSMENT PERIOD

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[31] *Leola Purdy Sons Ltd* v. *R* 2009 DTC 1042 (T.C.C.) at para 28. See also: *Canada* v. *Papiers Cascades Cabano Inc*, 2006 FCA 419; *Coastal Construction & Excavating Ltd* v. *R*, [1996] 3 CTC 2845 (T.C.C.); *New St. James Limited.* v. *M.N.R.*, 66 D.T.C. 5241 (Ex.Crt); *Aallcann Wood Suppliers Inc.* v. *The Queen*, 94 D.T.C. 1475 (T.C.C.); *Atlantic Thermal Star Limited* v. *The Queen* 2016 TCC 135; *Burleigh* v. *R.*. 2004 DTC 2399 (T.C.C.) and *Clibetre Exploration Ltd*. v. *R.* 2003 FCA 16.

[32] Because Bishop's Place was capital property other than depreciable capital property, the cost of the windows is included in adjusted cost base only if it forms part of the cost of the property transferred to his son. None of the adjustments in section 53 relate to the cost of improvements or additions to real property.

[70] The Minister first assessed Mr. Peach for his 2011 taxation year by assessment dated March 15, 2012. The reassessment was issued on August 11, 2015, more than 3 years after the original notice of assessment for that taxation year.

[71] Except in limited circumstances, the Act precludes the Minister from reassessing Mr. Peach for a particular taxation year more than three years after the original assessment for that year. In this case, the Minister alleges that, in filing his income tax return for the 2011 taxation year, Mr. Peach made misrepresentations attributable to neglect, carelessness or wilful default. If that is the case, the reassessment is permitted notwithstanding the expiry of the normal reassessment period.

[72] The onus to establish the misrepresentation and the neglect, carelessness or wilful default lies with the Respondent. While the standard is not a high one, the evidence must substantiate the misrepresentation and neglect, carelessness or wilful default.

[73] Moreover, where the Respondent establishes a misrepresentation attributable to neglect, carelessness or wilful default permitting a reassessment beyond the normal reassessment period, the reassessment is restricted to amounts related to the proven misrepresentations. The Minister may not reassess unrelated matters based on a misrepresentation.

[74] The reassessment of Mr. Peach's 2011 taxation year raises three issues: rental activity as a source of income, deduction of expenses related to HFS that the Minister claims are personal and/or not reasonable and so not deductible, and unreported income in the form of the taxable capital gain. The evidence must demonstrate a misrepresentation related to each of these matters.

[75] If the Minister establishes that a reassessment beyond the normal reassessment period is justified, the onus to establish that the facts and assumptions underlying that reassessment are incorrect lies with the taxpayer. In this case, for the reasons described above, Mr. Peach has not satisfied me that the Minister's reassessment is incorrect, except as to the amount of his taxable capital gain. However, that does not end the matter. I must consider whether that reassessment is valid notwithstanding that it was issued following the normal reassessment period. If it is not, then Mr. Peach's appeal must be allowed despite his failure to convince me that it is incorrect except as to the minor adjustment in the taxable capital gain.

[76] The provision that permits the Minister to reassess beyond the normal reassessment period has a remedial rather than punitive purpose. This is important to recognize. As a result, even innocent and honest mistakes can lead to a finding of neglect, carelessness, or wilful default under subparagraph 152(4)(a)(i). In *Nesbitt* v. *Canada*,[33] Justice Strayer observed at paragraph 8:

> [8] . . . It appears to me that one purpose of subsection 152(4) is to promote careful and accurate completion of income tax returns. Whether or not there is a misrepresentation through neglect or carelessness in the completion of a return is determinable at the time the return is filed. A misrepresentation has occurred if there is an incorrect statement on the return form, at least one that is material to the purposes of the return and to any future reassessment. It remains a misrepresentation even if the Minister could or does, by a careful analysis of the supporting material, perceive the error on the return form.
>
> [Emphasis added.]

Were there misrepresentations made by Mr. Peach?

[77] Mr. Peach did not report the capital gain or the disposition of the property in his tax return. Even if he were convinced he did not realize a gain, Mr. Peach is obliged to report the disposition in his return.[34] He did not do so. That is a misrepresentation.

[78] The rental properties were not a source of income. Some may question whether treating them as a source of income itself constitutes a misrepresentation. If pushed, I think I would conclude it was, because the arrangements were so clearly dominated by personal relationships. However, regardless, if the rental activity was a source of income, Mr. Peach made several misrepresentations in his income computations relating to that activity including the following:

1. Mr. Peach deducted the principal payment on the mortgage on Ryan's Lane.[35] That is a capital expense and not deductible in computing income.

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[33] [1996] F.C.J No. 1470 (F.C.A.).

[34] See paragraph 150(1)(d) and subparagraph 150(1.1)(b)(ii) of the Act.

[35] See Exhibits A-3 and R-6, and Mr. Peach's testimony.

2. Mr. Peach deducted the cost of furniture (a refrigerator, mattress and bedroom set), a water holding tank and a replacement kitchen, all capital expenditures.[36]

3. His travel logs for his properties include trips when he was in Rankin Inlet.[37]

4. Mr. Peach deducted 100% of the insurance costs related to Salmon Cove, notwithstanding that he and his wife lived in the property.

5. Mr. Peach reported all of the income and expenses associated with this activity notwithstanding he co-owned at least some of the rental properties with his wife.[38]

[79] Accordingly, Mr. Peach made misrepresentations in respect of his calculation of income from the rental properties.

[80] As to the business expenses, I am satisfied a number of expenses Mr. Peach deducted were personal and so not deductible. These include the cost of an Ipod, the Irewards renewal fee, postage to his wife and daughter, and the gifts he claims were for clients. Moreover, Mr. Peach deducted expenses for meals consumed by others.[39] These are all misrepresentations.

[81] Accordingly, I am satisfied Mr. Peach made misrepresentations in his tax return for 2011 in respect of each of the matters raised by the reassessment. Were these misrepresentations regarding expenses attributable to neglect or carelessness?

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[36] See Exhibit A-5.

[37] See Exhibit A-14. Travel is recorded for January 22, four trips in February, six in March (including at least one trip every week notwithstanding he was only in Newfoundland for part of March), six in April, eight in May, one in September, and four in October.

[38] Mrs. Peach co-owned at least Salmon Cove (See Exhibit A-10) and Bishop's Place.

[39] See Exhibit A-14 and R-2 (several meals for 2, 3 or 4 people including when Mr. Peach claimed to have travelled to St. John's on December 7th (2 meals for 2 people), 17th (food and liquor for 3) and 28th (meal for 4 people) for team training and meetings. Again, this suggests the travel had a personal element, but in any case the meals for others are not business expenses. Mr. Peach should have known this.

[82] *Venne* v. *The Queen*[40] is a leading case concerning the standard of care required to establish that a misrepresentation on an income tax return was not made through neglect or carelessness:

> . . . it is sufficient for the Minister, in order to invoke the power under subparagraph 152(4)(a)(i) of the Act to show that, with respect to any one or more aspects of his income tax return for a given year, a taxpayer has been negligent. Such negligence is established if it is shown that the taxpayer has not exercised reasonable care. This is surely what the words "misrepresentation that is attributable to neglect" must mean, particularly when combined with other grounds such as "carelessness" or "wilful default" which refer to a higher degree of negligence or to intentional misconduct. Unless these words are superfluous in the section, which I am not able to assume, the term "neglect" involves a lesser standard of deficiency akin to that used in other fields of law such as the law of tort.[41]
>
> [Emphasis added.]

[83] The standard is one of a wise and prudent person[42] who would otherwise discover any obvious error through a careful review.[43] No intention to deceive is required.[44]

[84] Did Mr. Peach act as a wise and prudent person and did he exercise reasonable care? In my view the answer is no. In light of all the evidence, I am satisfied that the misrepresentations in Mr. Peach's tax returns were attributable to his neglect or carelessness. In particular, I highlight the following factors:

1. While he has no specific tax expertise, and has not taken any accounting or tax courses, he is an educated man. He was a teacher, ran a business and owned several properties. Mr. Peach prepared his own income tax returns because he decided the higher costs the accountant charged to complete them was no longer justified. Having decided to prepare his own income tax returns, he is responsible for ensuring that they comply with the law

[40] 84 DTC 6247 (F.C.T.D.).

[41] *Ibid*, at page 6251.

[42] *Vine Estate* v. *The Queen* 2014 TCC 64, para 47.

[43] *Supra*, note 33.

[44] *Syla* v. *The Queen* 2016 TCC 266, para 8.

and for informing himself regarding that law. If he was uncertain about certain items, he should have sought advice.

2. While Mr. Peach appears to have gone to some length to record every possible expense he incurred in 2011, he has taken very little care in properly allocating the expenses between capital and non-capital and between personal and non-personal expenses, or in allocating non-personal expenses among his various activities.

3. Mr. Peach stated he used a computer program to complete the tax return and blamed the mistakes on the program. He said that the program would not accept the prorating of expenses among the four properties, HFS and personal use he wished to reflect on the return and this weakness in the program led to mistakes. In his view he should not be blamed for that. Yet Mr. Peach admitted he did not print the return to review it, but rather chose to review it on the computer screen. He said this was difficult. Careful review of a tax return always is warranted. However, given Mr. Peach‘s four properties and business, and the allocation of expenses he sought to achieve, in my view a careful review is required. Having chosen to use a computer program, Mr. Peach was required to take steps to ensure that the computer program was properly reporting the income by source. If he was having difficulty reading it on the screen he should have printed it so he could review it carefully. It is telling that he recognized it was difficult to review yet did nothing to overcome that difficulty. Had he reviewed the return with any care, in my view the errors would have been apparent.

4. Mr. Peach claimed he understood the difference between a capital expenditure (a replacement) and a current expenditure (a repair) because his accountant had educated him in that regard. Nonetheless, he attempted to deduct several expenditures that he labeled as “replacements”, not heeding the advice he claimed he received. This is both neglectful and careless.

5. Mr. Peach deducted costs related to a car that was driven by his son Stephen in circumstances when Mr. Peach and his wife each had another vehicle available.

6. Mr. Peach deducted expenses that were clearly personal (Ipod and Irewards renewal fee being obvious examples). Again, that can only be explained by carelessness or neglect.

7. His so-called travel log for the various activities has several instances where the same travel is attributed to more than one activity. I also observe that some of the dates Mr. Peach claims to have travelled for purposes of HFS, he has also claimed travel expenses in connection with his properties,[45] including in some cases for travel to different locations on the same day,[46] or the same mileage for two different purposes.[47] This is both careless and neglectful.

[85] In short, in preparing his tax return, Mr. Peach did not conduct himself as a wise and prudent person or with any care.

[86] Accordingly, I am satisfied that the Minister has established that Mr. Peach made misrepresentations and that those misrepresentations were attributable to carelessness or neglect. The reassessment dated January 16, 2018 is valid notwithstanding that the Minister issued it beyond the normal reassessment period for 2011.

[87] Mr. Peach made two other submissions regarding the normal reassessment issue that I want to address.

[88] First, he submitted that the CRA not only had to issue the notice of reassessment within the normal reassessment period but also had to complete the audit. The only authority that he cited for this proposition is a posting on the RosenKirshen Tax Law Blog. With respect, read in context, I am not sure that the sentence Mr. Peach refers to in that posting is intended to convey that the audit must be completed where the Minister is relying on a misrepresentation attributable to neglect, carelessness or wilful default, but if it is then the sentence does not correctly state the law.

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[45] See, for example, March 21, June 25, August 2, 5 and 9, December 7, 8, and 17.

[46] See, for example, December 7, 8 and 17 when there are travel expenses related to trips to St. John's said to relate to HFS but also trips to Carbonear or Brigus Junction said to relate to Ryan's Lane. [Exhibit A-14].

[47] See, for example, a trip to Carbonear on December 1 which Mr. Peach claims was to meet with a potential client but also claims the same trip for a meeting with the bank regarding the purchase of Ryan's Lane. [Exhibit A-14] On March 21 he claimed travel to Carbonear related to HFS but claimed the same mileage in relation to Riverside Drive. [Exhibit A-14].

[89] Secondly, Mr. Peach quoted from and referred to several cases he suggests support his contention that the reassessment is not valid, including *Foster* v. *The Queen* 2015 TCC 334;[48] *Mensah* v. *The Queen* 2008 TCC 378;[49] *Boucher* v. *The Queen* 2004 FCA 46;[50] *Mammone* v. *The Queen* 2019 FCA 45;[51] *CIBC* v. *Green* 2015 SCC 60;[52] and *Freitas* v. *The Queen* 2018 FCA 110.[53] However, none of these cases assist him with respect to the normal reassessment period issue.

VIII. CONCLUSION

[90] For the foregoing reasons, the appeal is allowed and the reassessment is referred back to the Minister for reconsideration and reassessment on the basis that:

1. Mr. Peach's taxable capital gain from the disposition of the Bishop's Place property to his son is $14,437;

2. Except as stated in paragraph 1, Mr. Peach's income for 2011 as assessed by the Minister and reflected in the reassessment dated January 5, 2018 shall not be adjusted; and

3. Each party will bear their own costs.

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[48] This case deals with subsection 152(5) of the Act, a provision not in issue in the case before me "once I have decided the Respondent has met the onus for reassessment after the normal reassessment period".

[49] In this case the trial judge found, on the evidence before the Court, that the Respondent did not meet the onus to reassess the taxpayer beyond the normal reassessment period. I have determined that the Respondent did meet the onus in the case of Mr. Peach's 2011 taxation year.

[50] The issue in this case was whether the trial judge correctly articulated the test for assessing the taxpayer beyond the normal reassessment period.

[51] This case dealt with a new basis of assessment underlying an assessment following expiry of the normal reassessment period. The principle there is not applicable in the case before me.

[52] This case dealt with the limitation period under the *Class Proceedings Act, 1992* (Ontario). It does not apply to Mr. Peach's appeal.

[53] This case dealt with whether a taxpayer was entitled to object to a reassessment issued beyond the normal reassessment period notwithstanding that the Minister was asserting it was not a valid assessment for that reason. Again, this is not an issue in the appeal before me.

Signed at Vancouver, British Columbia, this 23rd day of January 2020.

"K.A. Siobhan Monaghan"

Monaghan J.

CITATION:	2020 TCC 12
COURT FILE NO.:	2018-346(IT)I
STYLE OF CAUSE:	HAROLD PEACH v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	St. John's, Newfoundland
DATE OF HEARING:	October 23, 2019
REASONS FOR JUDGMENT BY:	The Honourable Justice K.A. Siobhan Monaghan
DATE OF JUDGMENT:	January 23, 2020

APPEARANCES:

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