Docket: 2019-3443(IT)I

BETWEEN:

PIERRE SAVOIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 24, 2020, at Montreal, Quebec

Before: The Honourable Justice Johanne D'Auray

Appearances:

Representative for the appellant:	Alain Savoie
Counsel for the respondent:	Valerie Messore

JUDGMENT

The appeals from reassessments made pursuant to the *Income Tax Act* (the Act) for the 2013 and 2014 taxation years are dismissed without costs on the ground that the Minister of National Revenue was entitled to reassess the appellant after the normal assessment period under subparagraph 152(4)(a)(i) of the Act.

Signed at Ottawa, Canada, this 23rd day of November 2020.

"Johanne D'Auray"

D'Auray J.

Citation: 2020 TCC 121
Date: 20201123
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and

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REASONS FOR JUDGMENT

D'Auray J.

I. FACTS

[1] At the time of the hearing, the appellant was 81 years old. At times, the appellant's memory failed during the hearing. To remedy this situation, his son Alain Savoie not only acted as his father's representative, he also testified regarding his father's medical practice and habits.

[2] The 2013 and 2014 taxation years are at issue.

[3] The appellant began practising medicine in 1964 as a family physician. After returning to study at university, the appellant graduated as a radiologist in 1976. He practised medicine for about 50 years, until he was 78 years old.

[4] At some point in his career, he was appointed Head of the Radiology Department at Sainte-Agathe Hospital.

[5] Subsequently, he incorporated Clinique Radiologique Laurentienne inc. Over the years, the company operated three radiology clinics located in St-Sauveur, St-Jovite and Ste-Adèle.

[6] The company sold the three clinics to Groupe Radiologix. The appellant's son testified that the company's last clinic, the one in St-Sauveur, was sold in 2011.

[7] The appellant continued to work at the St-Sauveur clinic as an independent consultant for Groupe Radiologix.

[8] At the same time, the appellant changed the name of Clinique Radiologique Laurentienne inc. to Consultations Pierre Savoie inc. (the Corporation). The appellant owns 100% of the Corporation's capital stock. The Corporation's fiscal year ends on May 31.

[9] The appellant testified that he used the services of the same accountant for approximately 40 years, a man named Mr. Cloutier, who was a certified general accountant (CGA).

[10] The appellant indicated that he trusted Mr. Cloutier completely. Mr. Cloutier was in charge of the Corporation's accounting, financial statements and general ledger, and he prepared the Corporation's and the appellant's income tax returns. For this work, during the years in question, Mr. Cloutier billed the Corporation an amount that ranged from $1,500 to $1,800.

[11] The appellant testified that he prepared all of his invoices without distinguishing between his personal and corporate expenses. He submitted his bills and credit card statements to Mr. Cloutier. The appellant relied entirely on Mr. Cloutier to keep his personal and corporate expenses separate.

[12] According to the appellant, Mr. Cloutier told him that he had software that enabled him to separate personal and corporate expenses.

[13] The appellant testified that he used the Corporation's credit card for his personal expenses. He had tried using two credit cards, one for the Corporation's expenses and another for personal expenses, but he found it too complicated.

[14] After the Agence du Revenu du Québec (ARQ) audited the Corporation, the appellant and his son, Alain Lavoie, realized that Mr. Cloutier had never separated the appellant's personal and corporate expenses.

[15] Following negotiations, the appellant reached an agreement with the ARQ. According to the agreement, 78% of the expenses that the Corporation reported in its income tax returns were personal expenses.

[16] The Corporation had reported $96,332 of expenses for the taxation year ending May 31, 2014, and $82,491 of expenses for the taxation year ending

May 31, 2015. As agreed in the agreement, most of the expenses were personal. Only 22% of the expenses were business expenses.

[17] The Canada Revenue Agency (CRA) obtained from the ARQ the result of the audit regarding Mr. Savoie and the Corporation. Based on the information obtained by the ARQ, the Minister of National Revenue (the Minister) reassessed Mr. Savoie for the 2013 and 2014 taxation years. The notices of reassessment for these years are dated August 16, 2018.

[18] Pursuant to these reassessments, the Minister added amounts of $56,905 and $53,935 to Mr. Savoie's income for the 2013 and 2014 taxation years, respectively. According to the Minister, the Corporation conferred a taxable benefit on Mr. Savoie under subsection 15(1) of the *Income Tax Act* (the Act) because the Corporation paid some of the appellant's personal expenses.

[19] The Minister reassessed the appellant for his 2013 and 2014 taxation years after the normal reassessment period pursuant to subparagraph 152(4)(a)(i) of the Act.

[20] The appellant admitted that the Corporation's expenses that the Minister disallowed were personal expenses. The appellant also acknowledged that a taxable benefit was conferred on him. However, he argued that the Minister could not make reassessments after the normal reassessment period.

II. ISSUE

[21] The only issue in this case is whether the Minister has proved that she was entitled to make reassessments after the normal reassessment period under subparagraph 152(4)(a)(i) of the Act.

III. POSITIONS OF THE PARTIES

[22] Mr. Savoie maintained that the respondent failed to establish that he made any misrepresentation that was attributable to neglect, carelessness or wilful default under subparagraph 152(4)(a)(i) of the Act.

[23] Mr. Savoie argued that he submitted all the vouchers to his accountant, Mr. Cloutier, and tasked him with sorting his business and personal expenses. Mr. Cloutier allegedly told him that he had software that sorted personal and business expenses. He therefore had good reason to trust his accountant.

[24] Mr. Savoie argued that he exercised due diligence. He could not be held liable for the actions and negligence of his accountant. As a result, the Minister could not assess him after the normal reassessment period.

[25] The respondent argued that Mr. Savoie was negligent or careless in his failure to realize that the expenses reported by the Corporation were excessive. Furthermore, most of the reported expenses could readily be identified as personal expenses.

[26] Consequently, the respondent argued that the reassessments were founded in fact and in law, because pursuant to subparagraph 152(4)(a)(i) of the Act, the Minister may make reassessments after the normal reassessment period when the taxpayer, as is the case here, has made any misrepresentation in his income tax returns through neglect or carelessness. The appellant was required to report the monetary benefits conferred on him by the Corporation as part of his income for the 2013 and 2014 taxation years.

IV. ANALYSIS

[27] According to subsections 152(4) and 152(3.1) of the Act, the Minister generally has three years to make an assessment from the day that a notice of an original assessment is sent. This is called the normal reassessment period.

[28] However, under subparagraph 152(4)(a)(i) of the Act, the Minister may at any time make a reassessment after the normal reassessment period when the taxpayer, or the person filing the return of income, makes any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud.

[29] According to subparagraph 152(4)(a)(i) of the Act, the onus is on the Minister to demonstrate that, in filing his income tax return, the taxpayer has:

(a) made any misrepresentation;

(b) and that this misrepresentation is attributable to neglect, carelessness or wilful default.

A. Misrepresentation

[30] *Nesbitt v. The Queen*[1] teaches us that a misrepresentation has occurred if there is an incorrect statement on the return form that is material to the purposes of the return and to any future reassessment. At paragraph 8 of his reasons, Justice Strayer of the Federal Court of Appeal stated the following:

> . . . Whether or not there is 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. It would undermine the self-reporting nature of the tax system if taxpayers could be careless in the completion of returns while providing accurate basic data in working papers, on the chance that the Minister would not find the error but, if he did within four years, the worst consequence would be a correct reassessment at that time.
>
> [Emphasis added]

[31] The appellant admitted that the Corporation could not claim the appellant's personal expenses as deductions on its income tax returns. In this case, therefore, there was a misrepresentation of important information on the income tax returns of the Corporation, whose sole director and shareholder was the appellant.

[32] Also, the appellant admitted that the expenses reported by the Corporation were his personal expenses. As a result, he also made a misrepresentation in his income tax returns for the 2013 and 2014 taxation years because, in computing his income, he failed to include the monetary benefit conferred on him by the Corporation when it paid his personal expenses.

B. Neglect, carelessness or wilful default

[33] According to subparagraph 152(4)(a)(i) of the Act, a misrepresentation must be attributable to neglect, carelessness, wilful default or fraud on the part of the taxpayer at the time the income tax returns are filed.

[34] In *Venne v. Canada*[2] [*Venne*], Justice Strayer of the Federal Court of Canada indicated that negligence is only established "if it is shown that a taxpayer has not exercised reasonable care in preparing his/her return"[3].

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[1] FCA, No. A-54-96, November 15, 1996, Justice Strayer [*Nesbitt*].
[2] [1984] FCA No. 314 (QL) [*Venne*].
[3] *Bédard v. The Queen*., 2016 TCC 179, paragraph 12.

[35] In *Venne*, as in this case, the taxpayer argued that his accountant had made several errors in his income tax returns. Mr. Venne argued that he relied on his accountant and could not be held responsible for his negligence. The evidence revealed that Mr. Venne did not read his income tax returns before signing them. Mr. Venne claimed that he was uneducated and could not understand income tax returns.

[36] Judge Strayer did not accept Mr. Venne's argument. In his reasons for judgment, he stated that a taxpayer cannot exempt himself from his obligation to exercise due diligence by delegating the preparation of his return to another person and not checking the information that his accountant entered in the income tax returns. In this regard, paragraph 19 of the Judge's reasons in *Venne* is relevant:

> First, there is ample evidence that the taxpayer did not read his returns before signing them. He admitted this on several occasions: see the examination for discovery of the plaintiff, questions 124, 420, 608, 740 and 859. There was also a specific admission by him with respect to one of the years in question, 1973, that he had not read the return: see the examination for discovery of the plaintiff, question 420. While one cannot expect a person with the plaintiff's limited education and limited experience with accounting matters to understand fully the details of a tax return, in my view he cannot absolve himself from all responsibility by hiring what he now says to be a patently inadequate bookkeeper and leaving matters entirely in the latter's hands. See for example Howell v. Minister of National Revenue, [1981] C.T.C. 2241, 81 D.T.C. 230 at 2243-44 [233]. Secondly, the errors in the income tax returns should have been sufficiently obvious that a reasonable man of even limited education and experience, especially one who was apparently a very successful businessman and investor, should have noticed.

[37] In *Vine Estate v. Canada*[4], Mr. Justice Webb of the Federal Court of Appeal referred to and highlighted the observations of Mr. Justice Bowie in *College Park Motor Products Ltd. v. The Queen*, 2009 TCC 409, on whether the Minister may reassess after the normal reassessment period if the accountant made errors in preparing the tax returns:

> 13 In examining this question it is important to remember that the purpose of subparagraph 152(4)(a)(i) is simply to preserve the Minister's right to reassess a taxpayer in circumstances where the taxpayer has not divulged all that he should have, as accurately as he should have, and thereby has denied the Minister the opportunity to assess correctly all of the appellant's liability under the Act in the first instance. It is not at all concerned with establishing culpability on the part of

[4] *Vine Estate v. Canada*, 2015 FCA 125.

the taxpayer. Other provisions of the *Act* are in place to do that.* Mr. Wintermute relies on the following statement that I made in an oral judgment:*

> There may well be circumstances in which misrepresentations are made in reliance upon the advice of an accountant or other professional where it was reasonable to do so and where the negligence of that professional advisor does not have the effect of establishing misrepresentation for the purposes of subsection 152(4). I am satisfied however, that this is not such a case, …

Clearly this statement was *obiter dictum*. More important, it does not accord with the decisions of Heald J. in *Nesbitt v. Canada** and of Bowman J. (as he then was) in *Snowball v. The Queen**. Bowman J. explained in *Snowball* the significant difference in the effect of negligence of a taxpayer's accountant or other tax preparer between cases where the assessment is made after the normal reassessment period and those cases where the Minister has imposed a penalty under subsection 163(2):

> In any event, even if Mr. Cockburn was negligent it is no answer to an otherwise statute-barred assessment under subparagraph 152(4)(a)(i). It is quite true that the negligence of an accountant may be a defence to a penalty under subsection 163(2): *Udell v. M.N.R.*, 70 DTC 6019 (Ex. Ct.). Subparagraph 152(4)(a)(i) is not a penal provision. It serves an altogether different purpose from subsection 163(2). Negligence in the preparation of an income tax return retains its consequences under subparagraph 152(4)(a)(i) whether it is the negligence of the taxpayer personally or that of the accountant or other tax return preparer who is his or her agent. . . .
>
> [Emphasis added]

[38] In this case, the appellant alleged that the Minister failed to demonstrate that made a misrepresentation in his tax returns attributable to neglect or carelessness. In fact, the appellant claimed that he acted with due diligence. He submitted all the documents to his accountant, Mr. Cloutier. Mr. Cloutier assured him that he would sort the personal and business expenses using sorting software.

[39] The appellant argued that like the plaintiff in *Venne*, he read his tax returns. He had used the services of the same accountant for over 40 years, and he trusted him. In addition, the expenses were deducted the same way during these 40 years.

[40] However, when the appellant was cross-examined, the evidence revealed that he made no effort to understand his tax returns.

> "Ms. Messore: Okay, perfect. So, then, are radiology studies very difficult?

> Pierre Savoie: Yes, they're difficult.
>
> Ms. Messore: It's difficult, okay. Then…
>
> Pierre Savoie: Then above all – excuse me for interrupting you – especially after we've practised in our office with our secretary for six and a half years and then go back to being a student again for four years.
>
> Ms. Messore: Okay.
>
> Pierre Savoie: Then, your bosses are younger than you are. Then you have to… you need to be somewhat flexible. I am an extremely determined person.
>
> Ms. Messore: Okay. So, what efforts did you make to understand your tax obligations?
>
> Pierre Savoie: Well, I've always relied on my accountant who told me things… common sense, that's it. I didn't get very involved in all of that. Taxation is not one of my strengths.
>
> Ms. Messore: So you are not interested in taxation?
>
> Pierre Savoie: No.
>
> Ms. Messore: No. And you haven't taken steps to try to figure it out yourself without the help of your accountant?
>
> Pierre Savoie: No. I can assure you that most doctors do not spend a lot of time and effort on their taxes! "[5]

[41] In this case, it was quite easy to analyze the credit card account statements. Obviously, purchases such as those made at the SAQ, the sports club, collectors store, the florist, the convenience store and the ticket office for tickets to hockey games were personal.

[42] Yet the appellant is educated, intelligent and, by his own admission, determined. Furthermore, the appellant himself incurred the expenses. He could not deny that most of the expenses incurred were personal and that these expenses would be listed on the Corporation's credit card statements.

[43] It is also difficult to see how the appellant could ever think that he could submit his credit card statements and bills to Mr. Cloutier and ask him to itemize the expenses without providing him with further details. According to the evidence, Mr. Cloutier entered all the amounts payable on the credit card statements as business expenses in the Corporation's general ledger and income tax returns.

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[5] Hearing held at the Tax Court of Canada, *Pierre Savoie v. The Queen*., 2019-3443(IT)I, Montreal, Quebec, August 13, 2020, pages 85 and 86.

[44] The evidence also indicated that over the years, tax refunds were obtained. The appellant said his accountant "almost took pride in giving [him] unexpected refunds." It seems to me that the unexpected tax refunds that he received for the 2013 and 2104 taxation years should have made him wonder what was going on. In fact, the appellant openly testified at the hearing that he did not have a lot of professional expenses as an independent consultant because Groupe Radiologix provided him with everything he needed.

[45] The evidence did not show that the appellant exercised due diligence. Had the appellant carefully read the tax returns, he would have quickly realized that the expenses claimed by the Corporation were too high. He cannot attribute his negligence to his accountant. In addition, the accountant did not testify. According to the testimony provided by the appellant's son, it was decided not to call Mr. Cloutier to testify because he would have been a hostile witness.

[46] The appellant's representative relied on *Aridi v. The Queen*[6] (*Aridi*) to argue that a taxpayer is not liable for his accountant's errors. I am of the view that this decision is of no assistance to the appellant. In that decision, Justice Hogan stated that if the taxpayer was negligent or inattentive, he cannot rely on his accountant's negligence or carelessness. In support of this assertion, Judge Hogan wrote the following at paragraphs 43 and 44 of his reasons:

> [43] . . . For one thing, in each [decision], the court came to the conclusion that the taxpayer had not carefully examined or had simply not read the tax returns before signing them. For another, in a number of these decisions, the court found that the taxpayer could have easily noticed the existence of the misrepresentation if the taxpayer had asked questions or taken the trouble to do a more thorough analysis. Lastly, in some cases, the court held that the taxpayer had to know, given the situation, that there was a misrepresentation.
>
> [44] Having considered the aforementioned decisions, the following observation must be made. In each of them, the courts recognized that the accountant who had acted for the taxpayer had been negligent. However, they came to the conclusion that the taxpayer had also been somewhat negligent: hence, the application of subparagraph 152(4)(a)(i) of the ITA.

[47] In *Aridi*, Judge Hogan found that Mr. Aridi had exercised due diligence, which is not the situation in this case.

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[6] *Aridi v. The Queen*, 2013 TCC 74.

[48] I am of the opinion that the appellant therefore made a misrepresentation in his 2013 and 2014 tax returns attributable to neglect and/or carelessness by failing to report the monetary benefits that the Corporation had conferred on him.

[49] Therefore, the appeals regarding the 2013 and 2014 taxation years are dismissed without costs.

Signed at Ottawa, Canada, this 23rd day of November 2020.

"Johanne D'Auray"

D'Auray J.

CITATION:	2020 TCC 121
DOCKET:	2019-3443(IT)I
STYLE OF CAUSE:	PIERRE SAVOIE AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	August 24, 2020
REASONS FOR JUDGMENT BY:	The Honourable Justice Johanne D'Auray
DATE OF JUDGMENT:	November 23, 2020

APPEARANCES:

Representative for the appellant:	Alain Savoie
Counsel for the respondent:	Valerie Messore

COUNSEL OF RECORD:

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