Docket: 2019-3804(GST)G

BETWEEN:

P.Q. PROPERTIES LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on March 29–30, 2023, at Halifax, Nova Scotia

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant: Maurice P. Chiasson, K.C.
Sara Nicholson

Counsel for the Respondent: Tokunbo C. Omisade

JUDGMENT

The appeal from the Notice of Assessment dated August 22, 2018 made under the *Excise Tax Act* is dismissed, with costs.

The parties shall have until January 10, 2025 to reach an agreement as to costs, failing which the respondent shall file written submissions by March 10, 2025 and the appellant shall file a written response by April 10, 2025. Any such submissions shall not exceed ten pages in length.

If the parties do not advise the Court that they have reached an agreement and no submissions are received by these dates, then one set of costs shall be awarded to the respondent in accordance with Tariff B.

Signed at Ottawa, Canada, this 1st day of October 2024.

"Susan Wong"

Wong J.

Citation: 2024TCC126
Date: 20241001
Docket: 2019-3804(GST)G

BETWEEN:

P.Q. PROPERTIES LTD.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Wong J.

Introduction/Overview

[1] Since the GST was introduced in 1991, builders have been required in certain circumstances to remit tax on the basis of making a self-supply. The self-supply requires the builder to treat their construction project as a sale to themselves, and then to remit the corresponding GST to the Minister of National Revenue.

[2] The appellant is a builder who constructed and held residential rental properties without making the necessary self-supplies and remittances. It relied heavily on its accountant to ensure that it met all its tax obligations.

Issue

[3] The question in this appeal is whether the Minister appropriately reassessed the appellant after the four-year limitation period for GST/HST collectible of $225,265 for the July 1 to September 30, 2011 reporting period.

[4] Specifically, did the appellant make a misrepresentation attributable to neglect, carelessness, or wilful default in failing to remit GST/HST when it completed construction of a multi-unit residential rental complex in 2011 and did not make the required self-supply under subsection 191(3) of the *Excise Tax Act*?

Legislative framework

[5] Section 191 of the Act deals with the self-supply of real property and specifically, subsection 191(3) deals with multi-unit residential complexes.

[6] The relevant portions of subsection 191(3) say that where: (a) construction of a multi-unit residential complex is substantially completed,[1] (b) the builder leases out any unit within the complex to someone to use as a place of residence,[2] and (c) that person is the first to occupy it as a place of residence after substantial completion of construction,[3] then the builder is deemed to have both: (d) made and received a taxable supply by way of sale of the complex,[4] as well as (e) paid and collected GST on the supply.[5] At the end of the self-supply chain, the builder is obliged to remit the tax paid by and collected from itself.

[7] There is generally a four-year limitation period for the Minister to assess net tax.[6] However, such an assessment can be made at any time where the person in question has made a misrepresentation that is attributable to their neglect, carelessness or wilful default.[7] The wording in paragraph 298(4)(a) of the *Excise Tax Act* is very similar to subparagraph 152(4)(a)(i) of the *Income Tax Act*, for which there is a larger body of relevant case law.[8]

[8] The purpose of the provision is simply to preserve the Minister's right to reassess where the registrant has not provided complete or accurate information, thus preventing the Minister from being able to assess correctly. It is not concerned with culpability, as there are penalty provisions for that purpose.[9] With respect to the misrepresentation itself, the threshold is low, i.e. a misrepresentation is anything that is incorrect.[10]

[9] The question is what the taxpayer/registrant knew or should have reasonably known at the relevant time.[11] The income tax version of the provision refers to the relevant time being when the return was filed or any information was supplied[12] while the GST version does not refer to a specific event.[13] Where a taxpayer/registrant thoughtfully, deliberately, and carefully assesses the situation and genuinely believes they have filed properly, there can be no misrepresentation due to neglect, carelessness, or wilful default.[14]

[10] It is sufficient for the Minister to show that the taxpayer/registrant has been negligent by not exercising reasonable care. The terms neglect, carelessness, and wilful default suggest a sliding scale of deficient conduct, with neglect involving a

lesser standard than carelessness or wilful default; the latter two suggest a higher degree of negligence or intentional misconduct.[15]

[11] The case law describes an apparent divergence of views as to whether a misrepresentation made by a registrant's accountant can constitute neglect or carelessness on the part of the taxpayer/registrant.[16] At one end of the spectrum is the notion that the taxpayer/registrant cannot shield itself from the provision by blaming its accountant.[17] At the other end of the spectrum is the notion that a taxpayer/registrant may have acted diligently even where its accountant did not.[18] I must admit that I find these perspectives to be reconcilable because they both distill down to the taxpayer/registrant's conduct in the particular circumstances.

Factual background

[12] The appellant was incorporated in 2006 and its sole shareholder is Paul Quinn. The appellant builds residential houses for ownership by third parties, as well as residential and mixed-use (residential and commercial) properties for rent. With respect to the rental properties, the appellant retains ownership after building them and rents them out to residential/commercial tenants.

[13] Mr. Quinn has a grade 8 level of formal education as well as one year of a two-year carpentry program at a community college completed in about 1987. He then went to do carpentry work for his father, who owned a construction business building single-level houses (for third parties) and rental properties (which his father kept and rented out). Mr. Quinn worked as a carpenter for his father for about six years, until his father died in 1993.

[14] He testified that after his father's death, he helped his mother look after his father's rental properties which consisted of duplexes, some multi-unit buildings, and commercial units. The properties belonged to his mother and he helped by doing maintenance and upkeep such as mowing grass, painting, and carpentry. He stated that he helped his mother this way until she retired in about 2020.

[15] When his father died, Mr. Quinn went to work for the town of New Glasgow for about two years forming sidewalks and concrete curbs. After his employment with New Glasgow, he went out on his own to build residential houses (for third parties) plus residential rental properties (to keep and rent out). He stated that during the 11-year period after New Glasgow in about 1995 and before incorporating the appellant in 2006, he built two houses for himself – one in about 1996 and the other

in about 1999. He testified that he lived in each one for several years before selling them.

[16] After incorporating in 2006, the appellant built three duplexes in 2008 on 14th Street in Trenton[19] as well as a duplex on Riverview Street in New Glasgow before 2010.[20] Mr. Quinn testified that after construction, the appellant retained ownership of the four duplexes as rental properties but did not self-assess or remit GST/HST. In about 2010, the appellant built a split-entry house on Terra Nova Avenue in New Glasgow.[21] Mr. Quinn stated that he lived on the top floor while the main floor was rented to a residential tenant. He testified that as far as he knew, the appellant did not self-assess or remit tax with respect to this property either.

[17] Mr. Quinn stated that in 2009 or 2010, the appellant began construction of the project which is the subject of this appeal, i.e. Quinns Way located on Westville Road in New Glasgow. It consists of five 4-unit buildings, for 20 units in total. He explained that as each building was finished, they would move tenants into that building, and work their way around the block to complete the project. The appellant's quarterly balance sheets for the periods ending December 31, 2010[22], March 31, 2011[23], and September 30, 2011[24] show that five buildings were completed in succession as Mr. Quinn described, with the project being finished by September 30, 2011.

[18] Mr. Quinn testified that as with the preceding duplexes and the house on Terra Nova Avenue, the appellant did not self-assess or remit GST/HST with respect to Quinns Way. He explained that he (correctly) understood from his accountant that commercial rents were subject to GST/HST while residential rents were not.[25] He testified that he had no accounting or bookkeeping experience, and relied on the appellant's accountant to take care of these matters. Mr. Quinn stated that his father used the same accountant but he (Mr. Quinn) did not know what services the accountant provided to his father.

[19] Mr. Quinn stated that he regularly dropped the appellant's invoices and files off at his accountant's office, and they handled the appellant's bookkeeping, payroll, year-end, as well as filed its returns for HST and income tax. He testified that he typically did not review returns before filing and left blank signed cheques for his accountant to make the necessary remittances on the appellant's behalf. He explained that he proceeded this way because he did not know anything about accounting or bookkeeping, and relied on his accountant's expertise.

[20] The appellant's accountant Carl McCunn testified that he did the accounting for Mr. Quinn's father for about three years beginning around 1978. When Mr. Quinn's father died in 1993, his mother asked Mr. McCunn to resume doing the accounting work for the family's business. He stated that when Mr. Quinn incorporated the appellant, he began doing the appellant's accounting from the beginning. He acknowledged in cross-examination that he understood the appellant's business to involve the construction of buildings which would either be sold or retained for rental purposes.

[21] Mr. McCunn testified that one of his employees handled the appellant's day-to-day bookkeeping and the preparation of the appellant's financial statements, the latter of which he reviewed. He stated that the same employee would have prepared the appellant's HST returns while another employee likely handled the appellant's payroll.

[22] He did not recall being involved with the appellant's HST returns on a regular basis but rather, remembered being involved in a specific situation involving input tax credits which were denied with respect to the purchase of a compact tractor. He explained that the appellant had a construction division which did construction for other clients and a residential division which built rental properties for the appellant's own purposes. He stated that when the appellant's construction division performed the work for clients, HST was charged to the customer, ITCs were claimed, and the transactions were reported in the appellant's returns.

[23] On the other hand, he testified that when the appellant's residential division built its own rental properties, no ITCs were claimed on its behalf because he believed doing so aligned with the fact that residential rents were not subject to HST. He acknowledged in cross-examination that he likely held this understanding from about 2006 until 2018 when Mr. Quinn contacted him about the CRA audit.

[24] He stated that he could not recall having any specific conversations with Mr. Quinn about self-assessment or the GST/HST implications on residential rents.

[25] With respect to Quinns Way, he testified that he knew about the construction but did not track each building as it was built. He stated that he focused on the appellant's annual year-end situation in terms of assets and liabilities. He recalled Mr. Quinn contacting him in around 2018 when the Canada Revenue Agency audit was underway, to ask him about self-assessment.

[26] By the time of the hearing, Mr. McCunn was retired. He stated that he received a commerce degree from St. Mary's University and joined Revenue Canada on graduation in 1970. He testified that he completed a 10-month training course with them and was a member of the Professional Business Accountants Association. He worked for Revenue Canada for 5½ years, after which he opened his own accounting office in New Glasgow. He took a 15-year break from full-time accounting practice to focus on an unrelated business, after which he returned to full-time practice in 1991.

[27] The appellant's manager Stephanie Quinn explained that the appellant changed accounting firms in 2016[26] because it was expanding operations and its bank required a letter of engagement (which Mr. McCunn's firm could not provide). She was not previously involved in the appellant's operations and began working for the appellant in August 2016, around the same time that the appellant changed accounting firms.

[28] Ms. Quinn stated that she received comprehensive bookkeeping training from one of the senior staff at the new accounting firm. She recalled that while she was re-entering old invoices for the new accountants' purposes in late 2016, the same senior staff member mentioned self-assessment and requested some old files from Mr. McCunn's office. She testified that since the appellant became aware of the requirement to self-assess, it has done so and remitted the requisite tax.

[29] The CRA auditor Juanita Butler testified that the scope of her audit (done in 2017 and 2018) was restricted to the Quinns Way complex and a complex built in 2016 called Quinner Court. She stated that a Nova Scotia Property Online search showed that at the time of her inquiry, the appellant owned 46 properties.[27] She testified that on reviewing the properties in greater depth, she identified multiple other large projects and residential buildings built by the appellant as rental properties.[28] Including the 52 units attributed to Quinns Way (20) and Quinner Court (32), her working paper showed approximately 75 rental units.[29]

[30] Ms. Butler stated that although the appellant had not made the requisite self-supply for any of the properties, the reassessment remained limited to Quinns Way and Quinner Court. She explained that a reassessment involving all the rental properties identified would have had a detrimental financial impact on the appellant, so she and her team leader chose instead to educate the appellant on the requirement to self-assess and discussed the option of voluntary disclosure.

[31] She testified that the appellant registered for GST purposes in 2010 and began filing returns in 2014.[30] She concluded that the appellant was unaware of the responsibility to self-assess and noted that it had not applied for the New Residential Rental Property/Housing Rebate[31] nor claimed ITCs with respect to Quinns Way or Quinner Court.[32] She testified that she subtracted the rebates and ITCs from her reassessment plus ensured that the appellant received those amounts before closing her file.[33]

[32] With respect to the Quinns Way assessment beyond the 4-year limitation period, she acknowledged that at the time, she was under the mistaken belief that Ms. Quinn was the bookkeeper when the complex was under construction in 2010 and 2011.[34] She also acknowledged that the appellant maintained proper books and records for the audit period.[35]

Analysis and discussion

[33] It is clear that the appellant was not well served by Mr. McCunn's accounting office during the period under appeal. Mr. McCunn worked for Mr. Quinn's father in the late 1970s and by the time his firm resumed doing accounting work for the Quinn family in about 1993, the GST had been in place since 1991. It is reasonable to expect a professional business accountant to stay current with GST/HST implications on the appellant's business and to in turn keep the appellant apprised. Unfortunately, that did not seem to happen here.

[34] The question then becomes whether the appellant acted diligently when its accountant did not. In balancing the Minister's ability to assess with the taxpayer/registrant's need for certainty, one must consider the obligation in a self-assessing system to report as accurately as possible. Regardless of any distinctions in the wording of the income-tax-versus-GST versions of the provision, it is difficult to find the appellant to have conducted itself diligently in the circumstances.

[35] Mr. Quinn did not attain a high level of formal education but has a skill set which enabled him to successfully follow in his father's footsteps and expand on what his father built. It was clear during his testimony that his highest level of interest, engagement, and knowledge came when he discussed the various properties built by the appellant over the years. He was able to easily recall approximately when each property was built, the nature of the property (rental or constructed for third parties), and other characteristics (number of units/buildings, location).

[36] On the other hand, his level of interest, engagement, and knowledge were noticeably low with respect the appellant's tax obligations. Mr. Quinn left signed blank cheques for Mr. McCunn's firm to pay the appellant's remittances, and acknowledged that he did not sign or review returns before they were filed. Even as the appellant's business grew, he did not ask questions in an effort to understand its GST/HST obligations better nor ensure that the appellant was meeting those obligations.

[37] While being interested is not required, understanding one's tax obligations necessitates a minimum level of engagement and knowledge that cannot be met by leaving all responsibility in another's hands.[36] It is particularly so when the ultimate responsibility for remittances continues to lie with the appellant. In this instance, it cannot be said that the appellant thoughtfully, deliberately, and carefully assessed the situation so there cannot be a genuine belief that the proper method was employed.[37] The appellant did not exercise reasonable care, so the threshold for neglect has been met.[38]

[38] In the circumstances, I hope that there remains an opportunity to seek waiver or cancellation of interest under subsection 281.1(1).

Conclusion

[39] The appeal is dismissed, with costs.

[40] The parties shall have until January 10, 2025 to reach an agreement as to costs, failing which the respondent shall file written submissions by March 10, 2025 and the appellant shall file a written response by April 10, 2025. Any such submissions shall not exceed ten pages in length.

[41] If the parties do not advise the Court that they have reached an agreement and no submissions are received by these dates, then one set of costs shall be awarded to the respondent in accordance with Tariff B.

Signed at Ottawa, Canada, this 1st day of October 2024.

"Susan Wong"

Wong J.

CITATION:	2024 TCC 126
COURT FILE NO.:	2019-3804(GST)G
STYLE OF CAUSE:	P.Q. Properties Ltd. v. His Majesty The King
PLACE OF HEARING:	Halifax, Nova Scotia
DATE OF HEARING:	March 29–30, 2023
REASONS FOR JUDGMENT BY:	The Honourable Justice Susan Wong
DATE OF JUDGMENT:	October 1, 2024

APPEARANCES:

Counsel for the Appellant:	Maurice P. Chiasson, K.C. Sara Nicholson
Counsel for the Respondent:	Tokunbo C. Omisade

COUNSEL OF RECORD:

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[1] *Excise Tax Act,* paragraph 191(3)(a)

[2] *Excise Tax Act,* subparagraph 191(3)(b)(i)

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[3] *Excise Tax Act,* paragraph 191(3)(c)

[4] *Excise Tax Act,* paragraph 191(3)(d)

[5] *Excise Tax Act,* paragraph 191(3)(e)

[6] *Excise Tax Act,* subsection 298(1)

[7] *Excise Tax Act,* paragraph 298(4)(a)

[8] *832866 Ontario Inc v. The Queen*, 2014 TCC 93 at paragraph 29

[9] *College Park Motors Ltd v. The Queen*, 2009 TCC 409 at paragraph 13; *Snowball v. Her Majesty the Queen*, 1996 CarswellNat 1309 (TCC) at paragraph 18

[10] *MF Electric Incorporated v. The King*, 2023 TCC 60 at paragraph 33; *Yadgar v. The King*, 2023 TCC 104 at paragraph 12, upheld in 2024 FCA 107; *Francis & Associates v. The Queen*, 2014 TCC 137 at paragraph 20

[11] *832866 Ontario Inc v. The Queen*, 2014 TCC 93 at paragraphs 30 and 31; *Nesbitt v. Her Majesty the Queen*, 1996 CarswellNat 1916 (FCAD) at paragraph 8

[12] *Income Tax Act*, subparagraph 152(4)(a)(i)

[13] *Excise Tax Act,* paragraph 298(4)(a)

[14] *Regina Shoppers Mall Ltd v. Her Majesty the Queen*, 1991 CarswellNat 382 (FCAD) at paragraph 7, *Regina Shoppers Mall Ltd. v. Her Majesty the Queen*, 1990 CarswellNat 344 (FCTD) at paragraph 10

[15] *Venne v. Her Majesty the Queen*, 1984 CarswellNat 210 (FCTD) at paragraph 16; *832866 Ontario Inc v. The Queen*, 2014 TCC 93 at paragraph 34

[16] *Levatte Estate v. The Queen*, 2019 TCC 177 at paragraph 11

[17] *Snowball v. Her Majesty the Queen*, 1996 CarswellNat 1309 (TCC) at paragraph 18; *Nesbitt v. Her Majesty the Queen*, 1996 CarswellNat 283 (FCTD) at paragraphs 27, 28, and 30

[18] *Aridi v. The Queen*, 2013 TCC 74 at paragraphs 34 and 50; *Vachon v. Canada*, 2014 FCA 224 at paragraph 4

[19] Exhibit A-1, Tab 14, page 80

[20] Exhibit A-1, Tab 14, page 80

[21] Exhibit A-1, Tab 14, page 80

[22] Exhibit A-1, Tab 14, page 80

[23] Exhibit A-1, Tab 15, page 96

[24] Exhibit A-1, Tab 15, page 103

[25] *Excise Tax Act*, Schedule V, Part I, section 6 re exempt supplies

[26] Exhibit A-1, Tab 5, page 41

[27] Exhibit A-1, Tab 17

[28] Exhibit A-1, Tab 7

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[29] Exhibit A-1, Tab 7

[30] Exhibit A-1, Tab 5

[31] *Excise Tax Act,* section 256.2

[32] Exhibit A-1, Tabs 8 and 19

[33] Exhibit A-1, Tabs 8, 13, and 19

[34] Exhibit A-1, Tab 12

[35] Exhibit A-1, Tab 12

[36] *Yadgar v. The King*, 2023 TCC 104 at paragraph 22, upheld in 2024 FCA 107

[37] *Regina Shoppers Mall Ltd v. Her Majesty the Queen*, 1991 CarswellNat 382 (FCAD) at paragraph 7, *Regina Shoppers Mall Ltd. v. Her Majesty the Queen*, 1990 CarswellNat 344 (FCTD) at paragraphs 10 and 11

[38] *Venne v. Her Majesty the Queen*, 1984 CarswellNat 210 (FCTD) at paragraph 16; *832866 Ontario Inc v. The Queen*, 2014 TCC 93 at paragraph 34