Docket: 2022-1281(IT)G

BETWEEN:

PREMIER FASTENERS INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on October 7, 8 and 9, 2025 at Toronto, Ontario

Before: The Honourable Justice Perry Derksen

Appearances:

Counsel for the Appellant:	Leigh Somerville Taylor Jennifer Dell'Aquila
Counsel for the Respondent:	Robert Zsigo

JUDGMENT

The appeals from reassessments made under the *Income Tax Act* in respect of the appellant's taxation years ending December 31, 2013, and December 31, 2014, are allowed and the reassessments for referred back to the Minister of National Revenue for reconsideration and reassessment on the following basis:

1. The amount previously included in computing the appellant's net income for the 2013 taxation as additional sales revenue of $1,844,337.83 be revised to $1,774,323.16.

2. The amount previously included in computing the appellant's net income for the 2014 taxation as additional sales revenue of $4,577,573.88 be revised to $4,254,337.61;

3. In computing the appellant's net income for the 2013 and 2014 taxation years, the appellant be allowed the following additional deductions:

Re 2013 Taxation Year	Allow Additional
Insurance	$19,020
Salaries & Wages	$12,378
Commissions	$14,990
CCA – Class 43	$6,846
Re 2014 Taxation Year	**Allow Additional**
Insurance	$26,217
Salaries & Wages	$136,689
CCA – Class 43	$51,192

4. The appellant's end of year UCC balance for Class 43 assets at the end of the 2014 taxation year be restated from $272,012 to $523,305.

5. The penalty previously imposed under s. 163(2) be recomputed on the basis that the appellant understated its income in the 2013 and 2014 taxation years by the amounts $1,774,323.16 and $4,254,337.61, respectively.

6. For greater certainty, the appellant is not liable for a penalty under s. 163(2) in the 2013 and 2014 taxation years in respect of the deductions that remain disallowed under the amended partial consent to judgment filed by the parties.

7. The appellant is not liable for a repeat late-filing penalty under s. 162(2) in the 2013 taxation year.

8. The appellant is liable for a late-filing penalty under s. 162(1) in the 2014 taxation, which penalty must be recomputed as a consequence of the relief granted herein.

The parties shall have until February 6, 2026 to reach an agreement on costs, failing which the Crown shall have until March 6, 2026 to serve and file written

submissions on costs and the appellant shall have until April 3, 2026 to serve and file written response submissions on costs. Any submissions shall not exceed five pages. If the parties do not advise the Court that they have reached an agreement and no submissions are received, costs shall be awarded to the Respondent as set out in the Tariff.

Signed this 6th day of January 2026.

"Perry Derksen"

Derksen J.

Citation: 2026 TCC 2
Date: 20260106
Docket: 2022-1281(IT)G

BETWEEN:

PREMIER FASTENERS INC.,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Derksen J.

I. **Overview**

[1] The appellant operates a fastener manufacturing business. This appeal concerns a bank deposit analysis that was undertaken by the Canada Revenue Agency (CRA) regarding the appellant's taxation years ending December 31, 2013, and December 31, 2014. As part of the analysis, the CRA converted amounts that were deposited in foreign currency accounts into Canadian currency. In the end, the CRA identified a discrepancy between the bank deposits and the sales revenue reported by the appellant. And so, the Minister of National Revenue reassessed on the basis that the appellant underreported its sales revenue in the 2013 and 2014 taxation years.

[2] The CRA split the discrepancy between two categories: (i) a foreign exchange (FX) discrepancy; and (ii) the remainder as unidentified bank deposits arising from omitted sales transactions. The amounts were as follows (all amounts are in Canadian currency unless stated otherwise):

2013 Taxation Year	Amount
(i) Unreported FX discrepancy	$572,037.55
(ii) Other discrepancy in sales revenue	$1,272,300.28
Total discrepancy in sales revenue	$1,844,337.83

2014 Taxation Year	Amount
(i) Unreported FX discrepancy	$1,194,241.50
(ii) Other discrepancy in sales revenue	$3,383,332.38
Total discrepancy in sales revenue	$4,577,573.88

[3] The Minister also disallowed certain deductions claimed by the appellant in computing its income for the 2013 and 2014 taxation years.

[4] The Minister's reassessments were made after the normal reassessment period on the basis that the appellant had made misrepresentations attributable to neglect, carelessness or wilful default within the meaning of s. 152(4)(a)(i) of the *Income Tax Act*, R.S.C., c. 1 (5th Supp.) (ITA).

[5] In reassessing, the Minister also imposed penalties, specifically:

a. penalties under s. 163(2) in respect of the unreported sales revenue and the disallowed deductions; and

b. late-filing penalties under s. 162 — a repeat late-filing penalty under s. 162(2) for the 2013 taxation year and a late-filing penalty under s. 162(1) for the 2014 taxation year.

[6] The parties signed a partial consent to judgment on October 7, 2025, which was provided at the start of the hearing and later amended to correct an error. The amended partial consent to judgment deals with the deductions that were disallowed. The appellant agrees that the Minister properly reassessed after the normal reassessment period in respect of those adjustments. But s. 152(4) remains in issue with respect to the amounts assessed as underreported sales revenue. The appellant also argues that s. 163(2) penalties are not applicable on the deductions that remain disallowed.

[7] Simplifying matters further, the Crown abandoned the late-filing penalty assessed under s. 162(2) in the 2013 taxation year. And the appellant agrees that a late-filing penalty under s. 162(1) is applicable in the 2014 taxation year, recognizing, however, that it must be recomputed based on the outcome here.

[8] Subject to certain adjustments, I have concluded that the appellant underreported its sales revenue in the 2013 and 2014 taxation years and that the Minister was able to reassess after the normal reassessment period. I have also concluded that penalties under s. 163(2) are applicable on the adjusted unreported sales revenue but not on the deductions that remain disallowed.

[9] In terms of an outline, I first consider a preliminary issue regarding the filing of an amended reply. I next consider alternative assessment techniques and describe the CRA's bank deposit analysis. Then I consider the statutory scheme relevant to determining the Canadian tax results for sales in foreign currencies. I conclude with my analysis and findings.

II. **Preliminary Issue – Amended Reply**

[10] After the hearing started, I granted leave to the Crown to make amendments to the reply. Certain amendments were opposed. The following are my reasons for allowing the amendments.

[11] By way of background, during a trial management conference I pointed out typographical errors in the Crown's reply and asked counsel to consider the advisability of making amendments to correct those errors. The Registry received an amended reply from the Crown on October 6, 2025, and the next day, after the hearing commenced, I asked whether the appellant was consenting to the amendments.

[12] The appellant consented to the amendments that corrected typographical errors but opposed the proposed amendment to the assumption of fact stated in paragraph 10(r) and the related amendments to paragraphs 15(a) and 17. The amendment to paragraph 10(r) added the following underlined text:

> 10(r) as a result of the Appellant not taking into account realized foreign exchange gains, and as a result of the Appellant not including all revenue from domestic sales, the Appellant underreported income as follows:
>
> i) 2013 taxation year - $1,844,338; and

ii) 2014 taxation year - $4,577,574.

[13] The amendment to paragraph 15(a) was in the following underlined text:

> 15. The issues to be decided are as follows:
>
> a) whether the Appellant, having received income in foreign currency from sales to persons in foreign jurisdictions, and having been remunerated in foreign currency, and having received income from Canadian sales, accurately reported its total income in Canadian currency for the taxation years; …

[14] The Crown also proposed to add the following to paragraph 17 in the grounds relied upon, which is underlined in the amended reply, but not here:

> 17. …Although the Appellant in its Notice of Appeal has only raised the issue of incorrect currency conversions in its appeal of the Minister's assessment, the Minister's assessment also takes into consideration underreported sales in Canada, as evidenced by the revenue deposits into Canadian accounts referred to in subparagraphs 10(f)(i) and (ii).

[15] I note that counsel for the appellant took conduct of this matter in May 2025 and did not draft the notice of appeal. That said, the reasons section of the notice of appeal focused on the foreign currency issue; paragraph 52 states the appellant "did not earn unreported income arising from foreign currency exchanges in the 2013 and 2014 fiscal years." Further, paragraph 53 states that if the appellant "did earn unreported income related to foreign currency exchanges – which is not admitted and expressly denied – the Minister improperly calculated the amount of the unreported income."

[16] In opposing these amendments, counsel for the appellant emphasized the Crown had admitted during the examination for discovery that the foreign currency exchange component of the unreported income was $572,037 in 2013 and $1,194,241 in 2014. Counsel for the appellant acknowledged the low bar under the legal test for amendments but said that the appellant would file an answer to plead additional facts regarding whether the appellant underreported its Canadian sales; the appellant wanted the hearing to be adjourned.

[17] An amendment should be allowed at any stage of a proceeding if it assists in determining the real question in controversy between the parties, provided it would not result in an injustice not compensable in costs and that it would serve the interests of justice: *Canada v. Pomeroy Acquireco Ltd.*, 2021 FCA 187 at para. 4 citing in part *Canderel Ltd. v. Canada*, [1994] 1 FC 3 (FCA).

[18] I allowed the amendments because the elements for the Minister's conclusion that the appellant had unreported revenue in 2013 of $1,844,337.83 and in 2014 of $4,577,573.88 are pleaded in the preceding assumptions set out in paragraphs 10(f) through to 10(q) of the reply and as such there was no prejudice to the appellant.

[19] Stated another way, since it was clear that the amount assessed as unreported revenue did not arise only from the conversion of the deposits in U.S. dollars or U.K. pounds sterling into Canadian currency, the appellant could not have been surprised and prejudiced.

[20] As I stated during the hearing, the appellant could not expect to have the Court determine whether the appellant was correctly assessed for unreported income arising from the foreign currency conversion issue and then somehow return later to challenge the portion unrelated to the foreign currency adjustments; the appellant appealed assessments that added the amounts of $1,844,337.83 and $4,577,573.88 to its revenue (and, in turn, net income) for the 2013 and 2014 taxation years, respectively.

[21] Although I allowed the amendments, I acknowledge the reply is not a model of clarity. In an income tax appeal, the Crown's reply has several essential functions, and one is to ensure that a trial judge who is new to the dispute can navigate the Minister's assumptions of fact to grasp the Minister's factual theory of the case — here the Minister's methodology. The Crown could have demonstrated the computations or appended schedules showing how the amounts in paragraph 10(r) were computed.

[22] After I granted leave to amend the reply, counsel for the appellant requested an adjournment to appeal. I denied an adjournment because the hearing of the appeal had commenced, and the appellant now had to await my judgment before moving to appeal my trial ruling on the amendments. In the circumstances, the hearing continued.

[23] Two further comments are warranted. First, after the bank deposit analysis was introduced into evidence to show the CRA's methodology, it became further apparent how the net discrepancy in sales was computed. It is difficult to see how the appellant would have suffered prejudice when throughout the litigation it was aware of the CRA's methodology.

[24] Second, the CRA auditor, Ms. Pearce-Coore, could not attribute the discrepancy to a single bank account or currency. In the end, amended

paragraph 10(r) would have been more accurate if it referred to revenue from "sales" or revenue from "domestic and foreign sales."

III. **Alternative Assessment Techniques**

[25] I now turn to the use of an alternative assessment technique in circumstances where the Minister has reassessed after the taxpayer's "normal reassessment period" as defined in s. 152(3.1).

[26] Subsection 152(7) allows the Minister to issue an arbitrary assessment or to assess a taxpayer using an alternative assessment technique. Specifically, s. 152(7) provides that the Minister is not bound by a return or information supplied by the taxpayer and the Minister can assess notwithstanding any return or information so supplied. The provision does not establish a specific technique that must be used (*Bousfield v. The King*, 2022 TCC 169 [*Bousfield*] at para. 16, *Guibord v. The Queen*, 2011 FCA 344 at para. 14, and *Hsu v. The Queen*, 2001 FCA 240 at para. 22).

[27] An alternative assessment technique involves some level of analysis and calculation in the attempt to determine a taxpayer's income or revenue: *Bousfield* at para. 11. This Court has emphasized that alternative assessment techniques should not be the norm; they should be a last resort: *Bousfield* at para. 17.

[28] Although the Minister does not generally use an alternative assessment technique unless a taxpayer's books and records are an inadequate means of determining the taxpayer's income, poor books and records are not a prerequisite. This is because s. 152(7) does not require that the taxpayer's records be inadequate before the Minister can rely on an alternative assessment technique. Thus, the Court does not have to be satisfied that it was necessary for the Minister to use an alternative assessment technique. The Minister can use an alternative assessment technique at any time regardless of the state of the taxpayer's records (*Bousfield* at paras. 17-18, citing in part *Berezuik v. The Queen*, 2010 TCC 296 [*Berezuik*] at para. 16).

[29] As stated, the Minister reassessed the appellant for the 2013 and 2014 taxation years after the appellant's normal reassessment period, and in particular more than three years after the initial assessments for those years. To open what is commonly referred to as a "statute-barred year", the Crown must prove on a balance of probabilities, in accordance with s. 152(4)(a)(i), that:

a. the taxpayer (or the person filing the taxpayer's return) has made a misrepresentation in the return for the taxation year; and

b. the misrepresentation was attributable to neglect, carelessness or wilful default, or the taxpayer has committed fraud in filing the return (see *Vine v. Canada*, 2015 FCA 125 at paras. 24-25 and *Deyab v. Canada*, 2020 FCA 222 [*Deyab*] at para. 23).

[30] A misrepresentation is an incorrect statement in the return, at least one that is material to the purposes of the return and to any future reassessment, and this is determinable at the time the return is filed: *Nesbitt v. Canada*, 1996 CanLII 11569, 96 DTC 6588 (FCA).

[31] In the circumstances, the Crown has the burden of establishing on a balance of probabilities that the appellant made a misrepresentation, namely by underreporting revenue (see *Lacroix v. The Queen*, 2008 FCA 241 [*Lacroix*], *Bousfield* at para. 26, and *Qi v. The King*, 2024 TCC 86 at paras. 80-81).

[32] Where the Minister has reassessed a taxpayer after the normal reassessment period, a taxpayer can mount a successful attack against an alternative assessment technique by showing that the Minister's use of the technique is fundamentally flawed (see *Bousfield* at paras. 21(c) and 23, and *Berezuik* at paras. 37 to 42, albeit in the context of the net worth method). If the Court finds the alternative assessment technique that the Minister used to be fundamentally flawed, then the Crown will not meet the burden (*Bousfield* at para. 26; and see *Cheema v. The King*, 2024 TCC 81 at para. 21).

[33] Turning to the other elements of s. 152(4)(a)(i), "neglect" refers to a lack of reasonable care (*Canada v. Paletta*, 2022 FCA 86 [*Paletta*] at para. 65). The duty of reasonable care is met if the taxpayer has "thoughtfully, deliberately and carefully assesse[d] the situation and file[d] on what he believe[d] bona fide to be the proper method"; in other words, "in a manner that the taxpayer truly believe[d] to be correct" (*Paletta* at para. 65, citing *Regina Shoppers Mall Ltd v. Canada*, 1990 CanLII 13603, [1990] 2 CTC 183 (FCTD), affirmed at (1991) 126 NR 141 (FCA)).

[34] "Carelessness" or "wilful default" refer to a higher degree of negligence or to intentional misconduct (*Venne v. The Queen*, [1984] CTC 223 (FCTD) [*Venne*] at p. 228).

[35] Because there is no suggestion that the appellant committed any fraud, I will not address that element in s. 152(4)(a)(i).

[36] Notwithstanding that the appellant concedes that the Minister properly reassessed to disallow the deductions that are the subject of the amended partial consent to judgment, the Crown must still satisfy its burden under s. 152(4)(a)(i) regarding any unreported revenue. This is because s. 152(4.01)(a)(i) provides that a reassessment under s. 152(4) may be made to the extent, but only to the extent, that it can reasonably be regarded as relating to a misrepresentation attributable to neglect, carelessness, wilful default or fraud.

IV. **The CRA's Bank Deposit Analysis**

[37] A bank deposit analysis is an indirect method of verifying a taxpayer's income. Its object is to determine the completeness of the revenue reported by a taxpayer. The technique only captures monies that were deposited into known bank accounts and scrutinizes specific deposits to determine whether a taxpayer has underreported sales or revenue.

[38] In *Bonhomme v. The Queen*, 2016 TCC 152 [*Bonhomme*], Justice Graham described the process of undertaking a bank deposit analysis:

> [5] … A bank deposit analysis is an alternative method of determining income that is sometimes used by the Minister when the Minister believes that a taxpayer's records are an inadequate means of verifying the taxpayer's income. A bank deposit analysis generally involves reviewing each deposit that a taxpayer has made to his or her bank account in excess of a certain amount. The Minister asks the taxpayer to explain the source of each of those deposits. To the extent that the taxpayer either cannot explain the source, provides an explanation that the Minister does not accept or admits that the source is taxable and was not reported, the Minister includes the deposit in the taxpayer's income. If the taxpayer is able to satisfy the Minister that a given deposit comes from a non-taxable source or has already been reported in the taxpayer's income, the Minister ignores the deposit.

[39] Leaving aside the statute-barred issue under s. 152(4), there are two primary ways in which a taxpayer can challenge a bank deposit analysis (see *Bonhomme* at para. 9). The first is to prove that the taxpayer's records were adequate and thus that the taxpayer's income should have been determined using those records. The second is to show that the unexplained deposits came from a non-taxable source or were already included in income.

[40] I now turn to the CRA's methodology. Later, I will review the evidence when I set out my findings.

A. **CRA's Methodology**

[41] The CRA's income tax audit was started by a different auditor, and it was eventually taken over and completed by Ms. Pearce-Coore. I have reproduced the bank deposit analysis in simplified form in Appendix I. And I will discuss the CRA's methodology by reference to the 2013 taxation year since it did not change.

[42] The CRA identified three bank accounts belonging to the appellant with the Royal Bank of Canada (RBC) in the following currencies: (i) Canadian currency; (ii) U.S. dollars (or USD); and (iii) U.K. pounds sterling (or GBP). For simplicity, I will refer to these as the CAD, USD or GBP accounts, as applicable.

[43] For each bank account, the CRA identified and tabulated all deposits into the account for each month to arrive at the total annual deposits in the CAD, USD and GBP accounts. For the GBP account in 2013, the auditor only had account statements for November to December.

[44] The CRA next tried to identify any deposits that were not revenue, or what the auditor referred to as "non-revenue deposits" in each account throughout the year. Here, the non-revenue deposits generally concerned loan credit deposits or transfers from one of the other accounts. For example, if funds were transferred from the USD account to the CAD account, the auditor identified it as a non-revenue deposit in the CAD account. This prevented double counting. The CRA tabulated and totalled the non-revenue deposits for the year in each of the CAD, USD and GBP accounts.

[45] The appellant did not convert its revenue from sales transacted in U.S. dollars or U.K. pounds sterling into Canadian currency. And so, the CRA converted the total annual deposits in the USD and GBP accounts into Canadian currency using an annual average rate of exchange. The CRA likewise converted the total non-revenue deposits in the USD account using the same rate of exchange. (No non-revenue deposits were identified in the GBP account.) I will refer to these as the FX adjusted amounts.

[46] The CRA determined the "total net deposits" for 2013, being the sum of the deposits in the CAD account and the FX adjusted amounts for the deposits in the USD and GBP accounts. This became the starting point to determine whether there

was a discrepancy in the sales revenue reported by the appellant. However, a series of adjustments were made, as discussed next.

[47] **First adjustment** — the CRA deducted the non-revenue deposits. With respect to the USD account, the FX adjusted amount for the total non-revenue deposits was used. Through these deductions, the CRA sought to eliminate any deposits that were not revenue.

[48] The second and third adjustments which follow relate to the appellant's accounts receivable. The objective was to transition the bank deposit analysis from a cash basis analysis to an accrued basis analysis. This is because taxpayers, in computing their income for a taxation year, must generally recognize income when it is accrued or receivable and do not use the cash basis of accounting (see also s. 12(1)(b)).

[49] **Second adjustment** — the CRA deducted the appellant's opening accounts receivable (as of January 1, 2013) which was taken from the appellant's year ending accounts receivable balance for the prior taxation year (i.e., for the taxation year ending December 31, 2012) as reported by the appellant on the balance sheet included with its income tax return filed for the 2013 taxation year. This deduction sought to eliminate the possibility that deposits received in 2013 concerned amounts that were receivable in the prior year and were presumed to have been included in the appellant's revenue in the prior taxation year.

[50] **Third adjustment** — the CRA added the appellant's year ending accounts receivable balance (i.e., for the taxation year ending December 31, 2013). The premise for this adjustment is obvious: if an amount remained receivable at the end of the year, the amount could not have been received and would not be among the bank deposits.

[51] Through the first, second and third adjustments, the CRA arrived at an amount which it termed "accrued deposits". For the 2013 taxation year, and after using the FX adjusted amounts, the CRA concluded that the appellant's accrued deposits totalled $13,215,396.83. But further adjustments were made.

[52] **Fourth adjustment** — The CRA deducted the sales revenue reported on the appellant's income tax return. For the 2013 taxation year, the appellant reported sales of $10,518,113.00. This resulted in a discrepancy of $2,697,283.83 (i.e., $13,215,396.83 − $10,518,113.00).

[53] **Fifth adjustment** — The CRA deducted the GST/HST collectible under s. 165 of the *Excise Tax Act*, R.S.C., 1985, c. E-15 (ETA) since the appellant was required to collect GST/HST on taxable supplies under the ETA. The adjustment recognized that GST/HST collectible is not a taxpayer's revenue under the ITA.

B. **CRA's Computation of Net Discrepancy in Revenue for 2013**

[54] After making the above adjustments, the CRA identified a net discrepancy in sales revenue of $1,844,337.83, of which $572,037.55 was identified as a foreign exchange discrepancy arising from the appellant's failure to convert its revenue from transactions in U.S. dollars and U.K. pounds sterling into Canadian currency. The remainder of $1,272,300.28 was considered attributable to other unidentified bank deposits. This warrants further explanation.

[55] Recall that the CRA's bank deposit analysis examined three bank accounts in the three different currencies. When the CRA tabulated and totalled the deposits in each of the CAD, USD and GBP accounts and then deducted any amounts identified as a non-revenue deposit in each respective account, the difference was asserted to be sales revenue in each of the three currencies.

[56] The CRA computed the portion attributable to a foreign exchange discrepancy as follows. The CRA identified deposits totalling USD$5,964,281.81 in the USD account, of which USD$2,000,000.00 were identified as non-revenue deposits resulting in a net amount of USD$3,964,281.81. The CRA next applied a conversion rate of 1.030084 on USD$3,964,281.81 to arrive at a FX adjusted amount of $4,083,544.26, and thus $119,261.45 was attributed to a foreign exchange discrepancy. The same approach for the GBP account resulted in a foreign exchange discrepancy of $452,776.10. Added together, the foreign exchange discrepancy totalled $572,037.55. And the remainder of $1,272,300.28 was computed as $1,844,337.83 minus $572,037.55.

[57] In reassessing the appellant for the 2013 taxation year, the Minister increased the appellant's sales revenue, and in turn net income, by $1,844,337.83.

C. **CRA's Computation of Net Discrepancy in Revenue for 2014**

[58] The CRA's bank deposit analysis for the appellant's 2014 taxation year was undertaken using the same methodology. The CRA used the opening and closing accounts receivable balances as reported by the appellant in the balance sheet information included with its income tax return filed for the 2014 taxation year. After

making the first, second and third adjustments, the CRA concluded that the appellant's "accrued deposits" totalled $16,491,176.88.

[59] After deducting the sales reported by the appellant in its income tax return of $11,016,805.00 (the fourth adjustment) the CRA arrived at a discrepancy of $5,474,371.88. After adjusting for the GST/HST collectible (the fifth adjustment) the CRA identified a net discrepancy in sales totalling $4,577,573.88, of which $1,194,241.50 was identified as a foreign exchange discrepancy arising from the appellant's failure to convert its revenue in U.S. dollars and U.K. pounds sterling into Canadian currency. The remainder of $3,383,332.38 was considered attributable to other unidentified bank deposits.

[60] The Minister increased the appellant's revenue, and in turn net income, for the 2014 taxation year by $4,577,573.88.

V. **Converting Foreign Currency Sales into Canadian Currency**

[61] The appellant admits that it failed to convert its sales revenue in US dollars and U.K. pounds sterling into Canadian currency and that by failing to do so it made a misrepresentation in its income tax returns filed for the 2013 and 2014 taxation years. However, the appellant says the misrepresentation was not attributable to neglect, carelessness or wilful default. Before disposing of this issue, I will briefly review the applicable statutory rules relating to sales in a foreign currency.

[62] Section 261 sets out a general rule that provides that all amounts required to be determined under the provisions of the ITA must be determined in Canadian currency.

[63] Before s. 261 was enacted in 2007, it was generally accepted that taxpayers computed their Canadian tax results using the Canadian dollar as their calculating currency, although the ITA was silent on this point (see *Canada v. Agnico-Eagle Mines Limited*, 2016 FCA 130 at para. 69; Wallace G. Conway & Liam Fitzgerald, "International Tax Planning − New Section 261: The Tax Calculating Currency Rules" (2008) 56:4 *Can. Tax J.* 957; and *Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada*, 2006 SCC 46).

[64] Moreover, the requirement that a taxpayer, in computing revenue denominated in a foreign currency, must use the foreign exchange rate in effect at the time of the transaction was considered by Woods J. (as she then was) in *Saskferco Products Inc. v. The Queen* (2007 TCC 462 at para. 46 [*Saskferco*], aff'd 2008 FCA

297 at para. 18). Woods J. described the requirement as a fundamental principle (*Saskferco* at para. 46).

[65] Section 261 is a detailed provision, but for present purposes the key rule is in s. 261(2)(a); it provides that in determining the Canadian tax results of a taxpayer for a particular taxation year Canadian currency is to be used.

[66] The expression "Canadian tax results" of a taxpayer for a taxation year is defined in s. 261(1) to mean, in part, "the amount of the income, taxable income or taxable income earned in Canada of the taxpayer for the taxation year" and "any amount that is relevant in determining …" those amounts (see paragraphs (a) and (d) of the definition in s. 261(1)).

[67] Moreover, s. 261(2)(b) provides that if a particular amount that is relevant in computing the Canadian tax results of a taxpayer is expressed in a currency other than Canadian currency, the particular amount is to be converted to an amount expressed in Canadian currency using the relevant spot rate for the day on which the particular amount arose.

[68] The expression "relevant spot rate" for a particular day is also defined in s. 261(1) (the definition was amended in 2017). In simple terms, "relevant spot rate" means the rate quoted by the Bank of Canada on the particular day (or the rate on the closest preceding day for which a rate is quoted if no rate is quoted for the particular day). Prior to the amendment, the definition, in part, referred to the noon rate quoted by the Bank of Canada on the particular day.

[69] For practical reasons, the CRA's administrative guidance states that it may also accept the use of an average of exchange rates over a period of time in order to convert certain income items (see CRA, Income Tax Folio S5-F4-C1, Income Tax Reporting Currency, first published in September 2016; and see IT-95R — Foreign Exchange Gains and Losses, December 16, 1980 (archived)).

[70] Here, the CRA did not use the relevant Bank of Canada spot rate and instead used the annual average closing rates published on OFX.com to convert the deposits into the appellant's USD and GBP accounts into Canadian currency. Moreover, there is an error in the rate used in converting U.K. pounds sterling into Canadian currency for 2013. The Crown agrees that the Bank of Canada rates should have been used and provided the average annual exchange rates for converting U.S. dollars and U.K. pounds sterling into Canadian currency for 2013 and 2014.

[71] In light of how the issues have been framed by the parties, it is unnecessary for me to consider the implications when foreign currency sales revenue remains receivable and the exchange rate has changed by the time payment is received.

VI. **Analysis and Findings: Whether the Appellant Underreported its Revenue**

A. **Auditor's Evidence**

[72] I begin by reviewing the evidence of the auditor, Ms. Pearce-Coore, because it provides important context.

[73] Ms. Pearce-Coore took over the audit in May 2017 from another auditor, Mr. Agnihotri. She understood at that time the CRA was waiting for documents from the appellant that had been requested at the start of the audit in 2016.

[74] Ms. Pearce-Coore's communicated with two individuals that were involved with the appellant's business, Mr. Manjeet Lotay and Mr. Ramminder Baweja. In terms of roles, Ms. Pearce-Coore understood that Mr. Lotay was a manager and Mr. Baweja was the general manager.

[75] Her first communication was by telephone with Mr. Lotay in May 2017. During that call, Ms. Pearce-Coore introduced herself and advised Mr. Lotay that she was taking over the audit. She also reminded Mr. Lotay that the CRA's request for documents remained outstanding. At the time, this included a request for all ledgers. Mr. Lotay said he would work on the request.

[76] Later, Ms. Pearce-Coore followed up on the outstanding document request but was given various explanations. She was confronted with more delay. In particular, she left a message for Mr. Lotay on August 16, 2017, and asked about the outstanding books and records. Mr. Lotay returned the call; he said that he would check on the request. The next day Mr. Lotay called back and told Ms. Pearce-Coore that he needed a few more weeks, and that he would speak to his partner and call back the next day. At that point, and faced with an ongoing delay, Ms. Pearce-Coore told Mr. Lotay that she could not wait — she needed to hear back from him that day.

[77] Ms. Pearce-Coore tried to follow up a few more times in August 2017. Then in October 2017, the CRA issued a requirement for information and documents to RBC requesting bank statements relating to the appellant.

[78] Ms. Pearce-Coore did not contact the appellant again until she sent her proposal letter dated July 31, 2019, almost two years later. My conclusion is that she resigned herself to a reality that documents were not going to be forthcoming from the appellant. This explains why the requirement was issued to RBC.

[79] In the end, Ms. Pearce-Coore received no documentation from the appellant in response to the outstanding request. This meant that in undertaking the bank deposit analysis, Ms. Pearce-Coore had not received copies of the ledgers, including sales ledger, or other source documents from the appellant. After the CRA's proposal letter was sent to the appellant in July 2019, Mr. Baweja provided a few documents and a submission, which I will return to later.

[80] Ms. Pearce-Coore was not initially aware that a different CRA auditor — Mr. L'Estrange, who was in a separate audit program — had undertaken a GST/HST audit (HST audit) of the appellant. It is not clear when the HST audit commenced. The HST auditor had obtained information from the appellant and Ms. Pearce-Coore later obtained electronic access to that documentation through the HST audit file. But in perusing the HST audit file, Ms. Pearce-Coore did not necessarily appreciate the nature of what was available.

[81] Counsel for the appellant obliquely challenged the necessity of a bank deposit analysis, asserting that documents of interest to Ms. Pearce-Coore were in the HST audit file. Aside from there being no threshold requirement before the CRA can undertake a bank deposit analysis, there is no evidence that Mr. Lotay or Mr. Baweja ever told Ms. Pearce-Coore that some documents had been provided to the HST auditor. There was also no evidence that Mr. Lotay or Mr. Baweja provided Ms. Pearce-Coore any explanation or guidance pertaining to the nature or content of the documents given to the HST auditor. The appellant was also aware that document requests remained outstanding for the income tax audit, and the appellant had received no confirmation from Ms. Pearce-Coore that the outstanding request had been withdrawn. That said, a two-year break in communication is unfortunate.

[82] In any event, Ms. Pearce-Coore's working papers acknowledge that the HST auditor had different accounts receivable balances (Ex. A-1, Tab 40 at p. 1324 and Tab 41 at p. 1360), but she used the amounts stated in the appellant's income tax returns filed for the 2013 and 2014 taxation years.

[83] Regarding the HST collectible, counsel for the appellant established in cross-examination that Ms. Pearce-Coore used an amount that did not accord with the

appellant's filings under the ETA. In argument, the Crown conceded that the amount deducted in the bank deposit analysis for HST collectible should be revised.

[84] I find that Ms. Pearce-Coore explained her methodology. And her credibility was not challenged by the appellant. Moreover, an evidentiary foundation was established that supports the CRA's bank deposit analysis: the account statements for the CAD, USD or GBP accounts were entered into evidence — the aggregate deposits are not in controversy; and the appellant's financial statements for 2013 and its income tax returns for the 2013 and 2014 taxation years were also entered into evidence. Apart from specific adjustments, the mathematical elements of the bank deposit analysis are not challenged.

[85] The question that remains to be considered is whether the bank deposit analysis is reliable or fundamentally flawed. To that end, I now turn to the evidence of the appellant's witnesses.

B. **Overview of the Evidence of Ramminder Baweja, General Manager**

[86] Mr. Baweja has a background in accounting. He attended the University of Toronto from 1980 to 1985 and eventually graduated with a degree in commerce and economics. From about 1985 to about 1987, Mr. Baweja operated a clothing store in Toronto. Then from about 1988 to 1992, he worked at an accounting firm, having obtained his designation as a chartered accountant in 1990. Eventually Mr. Baweja started an accounting practice. He worked with Mr. Lotay as partners in an accounting business until 1997.

[87] In 1997, Mr. Baweja's father, Joginder Baweja (Mr. Baweja Sr.) was retiring and was looking for an opportunity to start a business to occupy his time. Mr. Baweja Sr. had a background as a hydraulics engineer and, after immigrating to Canada, had worked in a factory looking after hydraulic extrusion presses. He had personal contacts that suggested they could provide subcontracts to start a new fastener manufacturing business. And thus began the appellant's manufacturing business in Etobicoke, Ontario. It makes fasteners for tier one and tier two suppliers that, in turn, supply the large OEM automotive companies with components.

[88] The shares of the appellant were held by the mothers of Mr. Baweja and Mr. Lotay, namely Satwant Baweja and Agia Lotay, respectively.

[89] Mr. Baweja began working in the appellant's business in 1997. He was responsible for the sales and administration. But Mr. Baweja Sr. had the lead role,

effectively running the business until around the year 2000 when his health declined. At that point, Mr. Baweja, took on the role of running the day-to-day business.

[90] Mr. Lotay was also involved from the outset, but in a more limited role.

[91] The business grew slowly. Then in 2005, the appellant had an opportunity to commence a new program by quoting a few jobs directly and was awarded some direct business, in contrast to supplying product through subcontracts. The business started to grow.

[92] Initially, the appellant supplied Canadian customers, but some of its customers had U.S. divisions. And so new opportunities emerged to make sales directly into the United States.

[93] There were two sides of the business, an operational side with workers in the manufacturing plant and an administrative side. By 2012, the appellant had about 20 or 21 employees, mainly skilled labourers working with machines or as general labourers. Mr. Baweja described running multiple products on a single machine, with obviously numerous machines. He said annual volumes approached 1.5 to 2 million pieces. Over the course of a single month, the appellant would process a couple hundred orders. Mr. Baweja was responsible for making sure the machine scheduling was done, manufacturing processes were completed, and that orders were fulfilled.

[94] The main material used in the manufacturing was steel, which was mostly purchased in Canada. There were also a few steel suppliers in the United States and occasionally sub-parts or products were purchased from suppliers in China or Taiwan, who accepted payment from the appellant in U.S. dollars.

[95] On the administrative side, there was Mr. Baweja and one bookkeeper, Ms. Lu.

[96] The Baweja and Lotay families were confronted with significant personal challenges in 2012. Mr. Baweja Sr. suffered a heart attack and around the same time began to develop Alzheimer’s disease. Mr. Baweja became involved in the day-to-day care of his father, who eventually passed away in 2016. Agia Lotay also became ill; she passed away in 2012. After this, Mr. Baweja said that Mr. Lotay’s health declined. And Mr. Lotay then became even less involved.

[97] Another major challenge emerged. Mr. Baweja had developed kidney cancer toward the end of 2011. He had a kidney removed in 2012 and his prognosis was positive after the surgery; he was cancer free. But the impact on the business was significant. Mr. Baweja stopped coming into work for about three months, and then over a period of eight months gradually returned more regularly.

[98] Regarding the appellant's accounting software, Mr. Baweja felt that the existing software, QuickBooks, was not able to handle the volume of part numbers and difference sizes of steel involved in the business. And so, he eventually purchased software called "DBA" in about 2010. Mr. Baweja did not take any training on the new software.

[99] Regarding sales to U.S. customers, Mr. Baweja testified that a bill would be sent out by Ms. Lu in U.S. dollars. Sales to U.S. customers were also recorded as non-taxable for GST/HST purposes. The product was shipped to a U.S. location and the customers paid in U.S. dollars.

[100] One of the appellant's customers, Multimatic Manufacturing, had a division in the U.K. known as EU Matic. The previous supplier of EU Matic went into bankruptcy in around 2010 or 2011. This resulted in the appellant having an opportunity to begin supplying product to EU Matic in the U.K. EU Matic became the appellant's only customer in the U.K. and the appellant's sales were in U.K. pounds sterling. However, the appellant did not open the GBP account with RBC until 2013 because of a delay in sorting out the logistics of receiving payment in U.K. pounds sterling.

[101] Mr. Baweja was asked about the appellant's financial statements for the 2013 taxation year. He said the appellant's cash balance would have been taken from the bank statements and the accounts receivable numbers and sales revenue would have been taken from what Ms. Lu had generated off the DBA system.

[102] Mr. Baweja also said that he reviewed the appellant's T2 income tax return for the 2013 taxation year with Mr. Kleiman, the external accountant, before it was filed. He also testified that he had no reason to believe that the income tax returns for 2013 and 2014 were not accurate.

[103] However, there is a fundamental disconnect between Mr. Baweja's evidence about his belief in the accuracy of the appellant's income tax returns for 2013 and 2014 — when the returns were filed — and how the appellant handled sales transactions in a foreign currency.

[104] Specifically, when asked about how the appellant handled foreign currencies, Mr. Baweja testified that he and Ms. Lu assumed the DBA software was converting sales made in a different currency, but he acknowledged that Ms. Lu did not handle the currency issue well.

[105] Mr. Baweja said he realized that the DBA software was not converting sales in foreign currency when Mr. L'Estrange, the HST auditor, raised the matter. Mr. Baweja acknowledged his understanding that the sales in a foreign currency needed to be converted.

[106] Mr. Baweja was asked about why the appellant did not provide Ms. Pearce-Coore with the general ledgers and trial balances for 2013 and 2014. His explanation was that she had not contacted him, that she had instead contacted his partner, Mr. Lotay. Mr. Lotay did not testify.

C. **Overview of the Evidence of Jie (Julie) Lu, Bookkeeper**

[107] Ms. Lu immigrated to Canada in 2005. She had an education in literature and had previously worked in sales. Ms. Lu was hired by the appellant in 2005 through a government program that reimbursed an employer for part of her salary. She had no background or training in accounting. And so, Ms. Lu enrolled in the CGA program on a part-time basis, which she finished in 2011 or 2012.

[108] Ms. Lu described her day-to-day work. Her main job was accounts receivable and accounts payable, and "a lot of time" was devoted to doing paperwork for shipping product. This involved entering a sales order in their computer system to generate a packing slip. But sometimes, parts would not be in the system (I took this to mean that the parts inventory data was not up to date in DBA) so she had to enter the relevant parts data before a packing slip could be electronically generated. Added to this was that paperwork needed to be prepared for shipment by, for example, FedEx or UPS.

[109] Ms. Lu confirmed that when she first started, the appellant was using QuickBooks accounting software. She was initially trained on how to enter invoices from suppliers and how to prepare invoices for customers. As for training on DBA, she confirmed that there was none. She described it as being purchased online. It came with a manual, which she used to setup the software.

[110] Before the appellant started using the DBA software, Ms. Lu said that the workers generated packing slips using Microsoft Excel and she would receive a sheet

of Excel data and manually enter the information in QuickBooks to generate an invoice. In contrast, Ms. Lu explained that a customer's purchase order was entered into DBA as a sales order. From there, "shipping" workers would go into DBA and pick the items for the sales order, along with the applicable quantities, and they would generate a packing slip. After, she just needed to know the number from the packing slip to have DBA generate an invoice from the packing slip. In this way, the previous manual re-entering of data was avoided.

[111] Counsel for the appellant asked Ms. Lu how the invoice gets posted in the DBA software. Her answer bears repeating since it does not accord with some of the other evidence:

> Ms. Lu: A. I think it's… generated in the software.
>
> Justice: Sorry, can you say that again?
>
> Ms. Lu: A. Once …the invoice is generated from the software, it should have been registered in the software. There's no extra step to be taken.
>
> Ms. Taylor: Q. So once you've clicked the button to generate the invoice, to the best of your recollection, there's nothing else that has to happen? It doesn't have to get posted to a sales journal? It doesn't have to go anywhere else?
>
> Ms. Lu: A. No, there's nothing you have to do. You generate the invoice, it, it's there. (Transcript, October 8, p. 69)

[112] Regarding sales in a foreign currency, Ms. Lu testified that for U.S. customers, she needed to set a price for U.S. dollars. I understand this to mean that the invoice issued to the U.S. customer was stated in U.S. dollars.

[113] Ms. Lu was also asked about the appellant's outstanding receivables and a troubling issue emerged. Apart from being very busy, Ms. Lu explained that the situation with the appellant's receivables was confusing. Sometimes a customer would request an account statement, but she did not have a clean statement to provide. And sometimes customers would make electronic payments and she would ask for a remittance advice but would receive no reply. As such, Ms. Lu said, "… without a remittance advice, I actually cannot post a payment" (Transcript, October 8, p. 70). And so, if a customer asked for an account statement, there might be an invoice still in the appellant's accounts receivable, and according to Ms. Lu, "they probably have already been paid, but I don't know. And when I ask, and they – I don't know, they just don't reply" (Transcript, October 8, p. 70).

[114] Complicating matters further, Ms. Lu said some customers had several plants and they would share an accounts payable department. On other occasions, she would receive a remittance advice, but the payment was different from the amount invoiced. She would make inquiries that would go unanswered. Sometimes the explanation from the customer would be that there was a quality control issue, but the appellant's internal quality control person would not receive paperwork for a quality control deduction.

[115] Ms. Lu emphasized that if she received a "clean" remittance advice, she would post it. But if she did not have a clean remittance advice, then sometimes she did not post it, it was "just left there" (Transcript, October 8, p. 71). She said some invoices were genuinely open, but others were not.

[116] Ms. Lu recalled the GST/HST audit. She also recalled providing the HST auditor with documents but did not have a specific recollection about providing an accounts receivable listing or sales journal. Her recollection was that she had provided everything that the HST auditor had requested. And she believed that the information that had been provided was correct, or in her words, "I don't have any reason to doubt it" (Transcript, October 8, p. 78).

[117] I conclude my overview of Ms. Lu's evidence acknowledging that she had more work than she could do. Ms. Lu was hired to do the accounting. But on top of that she had to do a lot of shipping because the person responsible for shipping had limited knowledge of computers. When FedEx and UPS moved the documentation process online, Ms. Lu said those tasks often became her job; she did not have much time for accounting. And since the DBA software was slow, things would pile up. She asked for help, but said, "…I guess it's not up to me, right?" (Transcript, October 8, p. 79).

[118] Put plain, Ms. Lu was overwhelmed with too much work.

[119] The Crown chose to not cross-examine Ms. Lu.

D. **The Appellant Underreported its Revenue**

(1) <u>Concession by the Appellant</u>

[120] The appellant concedes that it underreported its revenue and made a misrepresentation in its income tax returns filed for the 2013 and 2014 taxation years

by failing to convert sales transactions made in a foreign currency into Canadian currency and says the question is about the quantum. The appellant does not, however, concede that it otherwise underreported its revenue. Moreover, the appellant argues that the Crown has not met the burden under s. 152(4)(a)(i), and in particular that the Crown has not established that the misrepresentation was attributable to neglect, carelessness or wilful default.

(2) Credibility and Reliability

[121] At the outset, I will address the credibility of Mr. Baweja and Ms. Lu.

[122] Turning first the credibility of Mr. Baweja, the Crown acknowledged in argument that Mr. Baweja's credibility was not an issue. Counsel for the Crown submitted that Mr. Baweja was honest but completely overwhelmed and that the appellant mismanaged its accounting responsibilities.

[123] Except as stated otherwise regarding specific issues below, I find that Mr. Baweja was a credible witness; he sought to give his evidence in an honest and truthful manner, recognizing also that considerable time has passed since the events in issue. That said, I have concerns about the reliability of some of Mr. Baweja's evidence, and serious concerns about the reliability of the appellant's accounting records.

[124] Turning to Ms. Lu, I find that she was a credible witness, in the sense that she sought to give her evidence truthfully and accurately. Some of her evidence was unclear and, to the extent that she was involved, I have concluded the appellant's bookkeeping, including the appellant's accounting records for its sales revenue are unreliable. I do not cast blame on Ms. Lu. She was overworked. And she was overwhelmed by the demands placed on her.

(3) The Bank Deposit Analysis

[125] Subject to some adjustments that I will discuss, I find that the bank deposit analysis is reliable; the analysis is not fundamentally flawed. Importantly, a bank deposit analysis as an audit technique should, subject to appropriate adjustments, produce an accurate picture of a taxpayer's sales revenue.

[126] Here, the actual deposits into the appellant's three bank accounts — the CAD, USD or GBP accounts — are not in issue. And Ms. Pearce-Coore attempted, on her

own, to identify any non-revenue deposits. Those adjustments are set out in her working papers.

[127] Although a threshold does not need to be established for the CRA to use a bank deposit analysis, the evidence is clear that the appellant was not responsive to the document requests made by the CRA's income tax auditors. Moreover, the appellant has not provided general ledgers supporting its sales revenue, accounts receivable and cash accounts for the 2013 and 2014 taxation years as reported in its income tax returns.

[128] This raises a question: what accounting information was relied on when the appellant filed its income tax returns? I do not know. Whatever the appellant used, it was not reliable. I will explain this finding.

[129] The appellant reported year-end cash balances of $1,348,032 for 2013 and $1,733,657 for 2014. But the appellant's year-end cash balances were very different based on the information available now, and regardless of whether examined using a rate of exchange (ROE) at par or at the Bank of Canada average annual exchange rate:

Bank Account	Cash at Par	ROE	Cash Converted
RBC CAD Dec 31/13	$136,562.73	1.0	$136,562.73
RBC USD Dec 31/13	USD$2,931,141.85	1.029915	$3,018,826.96
RBC GBP Dec 31/13	£228,855.69	1.611266	$368,747.39
Total Cash:	$3,296,560.27	Converted:	$3,524,137.08
RBC CAD Dec 31/14	$227,782.44	1.0	$227,782.44
RBC USD Dec 31/14	USD$3,110,723.61	1.104466	$3,435,688.46
RBC GBP Dec 31/14	£897,209.88	1.81903	$1,632,051.69
Total Cash:	$4,235,715.93	Converted:	$5,295,552.59

[130] This implies a variance after converting the foreign currency of $2,176,105.08 for 2013 ($3,524,137.08 − $1,348,032) and $3,561,865.59 for 2014 ($5,295,552.59 − $1,733,657). Accordingly, I do not accept Mr. Baweja's evidence that the information for the appellant's cash balances was taken from the bank statements.

[131] Regarding the appellant's accounts receivable opening and closing balances as reported for the 2013 and 2014 taxation years, I do not know what amounts were in those accounts; the details are missing.

[132] The appellant had provided reports that were titled "Customer Summary Aging" for 2012, 2013, and 2014 to the HST auditor, apparently restating its accounts receivable balances (Ex. A-1, Tabs 12, 13, and 14). The reports were printed on January 23, 2019, long after the taxation years in issue. These reports show very different accounts receivable balances.

[133] When asked why the accounts receivable closing balance for 2012 of $2,130,051 was different from what was on the appellant's income tax return for 2013 (i.e., of $1,318,762), Mr. Baweja said, "Julie was not posting payments till much after …" (Transcript, October 7, p. 120; and see Ex. A-1, Tab 12).

[134] Along similar lines, under cross-examination, Mr. Baweja was also asked whether the accounts receivable balances as filed in the appellant's income tax returns looked right. He testified that Ms. Lu was not posting payments or invoicing in a timely way:

> Mr. Baweja: A. I mean, do they look familiar to me? Yes. Are they right? I don't know. I mean, are they, because as I mentioned that sometimes, you know, she wasn't posting all the payments that came in at the right time, or invoicing, you know, necessarily, you know, as soon as everything was there. So I mean, and if there were any allowances for accounts, or if there were bad debts, or - - I mean, they look familiar because that's what we've put on the return, but whether they were, you know, scrutinized item by item, I can't say that it was correct, in light of all the errors that were there. (Transcript, October 8, pp. 41-42)
>
> [Emphasis added.]

[135] Likewise, when asked whether he had any comments about the accounts receivable amounts in the CRA's bank deposit analysis for 2014, Mr. Baweja said, "not anything different from what I mentioned for 2013" (Transcript, October 8, p. 44).

[136] The evidence is also clear that Ms. Lu was not reconciling the appellant's accounts receivable to the customer payments deposited into the appellant's bank accounts, or at least not until long after the fact. She knew that reconciliations should be done but was too busy, and the software in her view was too slow:

> Ms. Lu: A. Well, I'm [supposed] to reconcile it, but like one thing is that I'm too busy, and two the second thing is that the software is really, really, very slow. If I start doing reconciliation on this thing, it's kind of like I'm going to sit there forever to do it, while meanwhile shipping and others say, I'm busy with this, need to do this. And then like [suppliers] say, oh, you are late if you don't pay us, so we can put you on hold. So sometimes the reconciliation is like after a couple of years.
>
> Ms. Taylor: Q. After a couple of years?
>
> Ms. Lu: A. Yeah. (Transcript, October 8, pp. 72-73)

[137] I digress to acknowledge the basic accounting treatment that should arise from a sale of goods to a customer and how a taxpayer's accounts, including the cash account and accounts receivable, ought to remain accurate. When product is shipped to a customer and invoiced (subject to any unique terms) a debit entry would be made to the taxpayer's receivable account and a credit entry would be made to the sales account. When payment is received, a debit entry would be made to the taxpayer's cash account and a credit entry would be made to the receivable account.

[138] When done properly through journal entries and the subsequent posting of those entries to the appropriate accounts in the general ledger, and when a reconciliation is done with the bank account, there would be offsetting entries as between the cash account and the receivable account. In this way, sales revenue is recognized and credited to the sales account when the amount becomes receivable, and the receivable account is debited. When payment is received, the necessary entries are journalized and posted; the receivable account and cash account remain in sync. In other words, the receivable account should not be overstated.

[139] Here, what is unusual is that it is not in the appellant's interest to vouch for the accuracy of the accounts receivable balances reported in its income tax returns because if the restated balances for 2012, 2013 and 2014 are applied to the bank deposit analysis the net adjustments would be favourable to the appellant. I will return to this later.

[140] Regarding the amounts reported by the appellant as its sales revenue for 2013 and 2014, the evidence is clear that the appellant did not convert or translate its sales in U.S. dollars and U.K. pounds sterling into Canadian currency. As such there is no question that the appellant's sales revenue as reported was not accurate.

[141] The evidence further supports that the appellant's sales revenue as reported was not reliable. For example, after Ms. Pearce-Coore sent the CRA's proposal letter

to the appellant, Mr. Baweja provided a written response dated August 30, 2019. Significant is that he provided a restated sales summary for 2013, which showed sales revenue of $11,200,908 with foreign currencies computed at par, compared to the sales revenue reported of $10,518,113.

[142] The restated sales summary was extracted on August 30, 2019. Mr. Baweja also applied a ROE for foreign currency amounts, which showed sales revenue totalling $11,613,285. He next made an adjustment for sales discounts and chargebacks and arrived at total sales of $11,558,575. Of that amount, he attributed $412,377 as additional income for the foreign currency exchange. Implicit is that Mr. Baweja acknowledged the appellant had underreported its sales.

[143] Mr. Baweja's evidence confirms this fact:

> Ms. Taylor: Q. Did you think that the sales were understated by over a million dollars?
>
> Mr. Baweja: A. I mean, obviously we realized, and that may have been through the GST auditor, who said to us that, you know, this program is not converting U.S. sales, and we should be applying that amount. And so part of that million dollars, about 400,000 of that was relating to the foreign exchange, and the balance was what was under-reported. (Transcript, October 7, p. 116)

[144] Mr. Baweja also acknowledged that there may have been invoices that were entered later on:

> Ms. Taylor: Q. And so the information that is on this $11,200,000 in sales, it's almost the same as what we saw in the GST returns. How do you explain that?
>
> Mr. Baweja: A. Obviously there was an error. Whether it was – like I said, I didn't look at it monthly, basically, what the numbers were given to me by Julie, or by [the] DBA software, but then there may have been invoices that were entered later on that might have been missed. We (sic) on a yearly basis, there were a large number of invoices, so if there was something that was missed or not invoiced on a regular basis, or there was a discrepancy in how the DBA was, you know, timing, the invoices, we assumed that the packing slip generated, the invoice was there, but if a packing slip happened in March and she didn't invoice till June or more towards the end of the year, there were some, there were some discrepancies there. And I really don't know … (Transcript, October 7, p. 118)

[145] Under cross-examination, Mr. Baweja acknowledged he was making a factual admission in the August 30, 2019, letter that the appellant had underreported its sales for 2013:

> Mr. Szigo: Q. And you're saying that $400,000 was attributable to currency issues, a currency conversion mistake, okay?
>
> Mr. Baweja: A. Yes.
>
> Mr. Szigo: Q. And then is it fair for me to state that $600,000 was like basically things that were not captured in your books?
>
> Mr. Baweja: A. Yes. At the time when it was filed, GST returns and the T2.
>
> Mr. Szigo: Q. … I'm putting it to you that there's, like you're essentially admitting to her that there's also a $600,000 was unreported income.
>
> Mr. Baweja. A. That was discovered later on, yes. (Transcript, October 8, p. 32)

[146] In the letter of August 30, 2019, Mr. Baweja did not address the CRA's proposed adjustments for the 2014 taxation year apart from referring to an invoice for CCA. No restated sales summary was provided to Ms. Pearce-Coore for 2014.

[147] However, the appellant had provided a restated sales summary to the HST auditor for 2014, which restated sales revenue at $13,613,386 compared to the sales revenue reported in its income tax return of $11,016,805. Here too it is implicit that the appellant understood that its sales revenue in 2014 was understated by at least $2,596,581 ($13,613,386 − $11,016,805). Moreover, a cursory review of the document provided to the HST auditor for 2014 shows that the amount of $13,613,386 was arrived at by adding the net portion of taxable sales stated at $7,439,027 and non-taxable sales stated at $6,174,359.

[148] There is no indication that any foreign currency sales were converted into Canadian dollars in the restated sales summary. If foreign currency amounts were converted, the understated amount would be significantly greater.

[149] Considering the totality of the evidence, the appellant's sales revenue as reported in its income tax returns for 2013 and 2014 was not based on reliable accounting information.

[150] Moreover, I canvassed counsel for the appellant in argument as to any findings that I should make regarding the ledgers or "Tax Code Activity" reports for 2013 and 2014 that were entered as Exhibit A-1, Tabs 8 and 9. Counsel confirmed that the Court was not being asked to draw any inference or to accept as true any of the contents of those documents; instead, they were to show that these documents were available to Ms. Pearce-Coore through the HST audit.

[151] In the end, I have no hesitation in concluding that the CRA's use of the bank deposit analysis technique was well founded; there was little else that the CRA could do in the circumstances to examine the sales revenue reported by the appellant in its income tax returns.

[152] The evidence indicates that the appellant was not always posting or entering sales invoices in its sales ledger contemporaneously with the invoicing of customers. I have also considered whether the appellant did not include sales transacted in U.S. dollars or in U.K. pounds sterling in the sales revenue reported in its income tax returns. Rather than speculating, because what happened remains unclear and not fully explained, I will instead focus on the bank deposit analysis.

[153] Accordingly, I return to the bank deposit analysis and consider the specific adjustments in light of the evidence.

*(a) **Are There Additional Non-Revenue Deposits?***

[154] Under cross-examination, Mr. Baweja was asked whether he was suggesting that Ms. Pearce-Coore missed entries for deposits into the appellant's CAD account in 2013 that were not revenue-related. Mr. Baweja was unable to identify any additional non-revenue deposits for that account in 2013.

[155] Regarding the deposits into the appellant's CAD account in 2014, Mr. Baweja referred to a deposit slip for a deposit of $266,790.53 on June 12, 2014, which included a draft from SGL for $250,000 (Ex. A-1, Tab 35). Mr. Baweja testified that the $250,000 deposited was a repayment of a short-term loan that the appellant had made to SGL, likely in 2014 or possibly in late 2013. He said the $250,000 was not revenue from a sale. Under cross-examination, Mr. Baweja emphasized that if the loan was made and repaid in 2014, it would not be reflected on the appellant's financial statements.

[156] Although loan and accounting documentation for this transaction is non-existent, I accept Mr. Baweja's evidence that the $250,000 was a non-revenue

deposit. As such, the Canadian dollar deposits for 2014 must be adjusted for an additional non-revenue deposit of $250,000.

[157] Except for some evidence respecting payments from EU Matic in 2013, which I will address later in the context of the accounts receivable balances, the appellant identified no other amounts in the bank deposit analysis that were non-revenue deposits. This creates a problem for the appellant since the aggregate deposits into the CAD, USD or GBP accounts are established. And only the appellant would know the details about any non-revenue deposits forming part of the aggregate deposits.

[158] Although the Crown has the burden of establishing on a balance of probabilities that the appellant had unreported income or revenue, the appellant cannot disengage. The appellant has had years to review its records and to identify additional non-revenue deposits. It identified just one. In the circumstances, no other adjustments for non-revenue deposits are warranted.

(b) ***Are Further Adjustments Required for the Accounts Receivable Balances?***

[159] I turn next to the adjustments relating to the appellant's opening and closing accounts receivable balances. As stated previously, Ms. Pearce-Coore relied on the balances reported in the appellant's financial statements for 2013 and in the appellant's income tax returns filed for the 2013 and 2014 taxation years.

[160] The appellant has several lines of argument regarding the accounts receivable balances. To begin, Mr. Baweja was referred to the appellant's GBP account statements with RBC for 2013, and in particular the opening balance for November 1, 2013, of £581,774.93. He expressed the view that this amount did not relate entirely to sales to EU Matic in 2013, and instead reflected payments received in 2013 for sales made in 2011, 2012 and 2013.

[161] The appellant also introduced a sales summary for 2011 and 2012 regarding EU Matic, ostensibly in U.K. pounds sterling that shows sales of 4,891.80 and 246,075.79, respectively. The summaries do not denote the currency apart from a handwritten note on the documents (Exhibit A-1, Tabs 6 and 7).

[162] The appellant also introduced a restated accounts receivable report as of December 31, 2012, that on its face was printed on January 23, 2019. It shows the amount of $143,152.03 as the amount receivable from EU Matic, with an overall accounts receivable closing balance of $2,130,051.24 in respect of various

customers (Exhibit A-1, Tab 12). This is to be contrasted with the accounts receivable closing balance of $1,316,762 as of December 31, 2012, as reported in the appellant's income tax return filed for the 2013 taxation year.

[163] The appellant also points to restated accounts receivable reports as of December 31, 2013, and December 31, 2014, that on their face were printed on January 23, 2019, to argue that the Court should use these balances (Exhibit A-1, Tabs 13 and 14). These reports show an accounts receivable closing balance as of December 31, 2013, of $2,054,935.77 and as of December 31, 2014, of $2,067,776.16. These were the same balances reflected on the HST auditor's working paper for 2014, which I note was not admitted into evidence for the truth of its contents. (The documents at Tabs 12, 13, and 14 of Ex. A-1 were located in the HST auditor's audit file.)

[164] The above balances are to be contrasted with the accounts receivable closing balances that the appellant reported on its income tax returns: a closing balance of $1,692,058 as of December 31, 2013, and $1,814,916 as of December 31, 2014.

[165] The premise for the deduction made in the CRA's bank deposit analysis for the appellant's opening accounts receivable balance was to remove all amounts that were receivable and presumably reported as revenue in the prior year. Thus, if an amount was included in the appellant's accounts receivable opening balance as reported in its income tax return for 2013 (i.e., as of December 31, 2012) in respect of EU Matic, the CRA's deducted the amount from the deposits in 2013.

[166] The problem here is that the appellant has not produced accounts receivable ledgers supporting the balances reported in its income tax returns filed for 2012 and 2013. As such, it is not possible for me to see what amounts were reported as receivable as of December 31, 2012, in respect of EU Matic. Without knowing what amounts were receivable in the 2013 taxation year compared to the 2011 and 2012 taxation years, it becomes difficult to determine whether the CRA's methodology accurately accounts for the revenue earned in respect of EU Matic. The logic embedded in the CRA's methodology implies that the amounts receivable in respect of EU Matic from before 2013 would have been deducted. Creating further difficulty is that the appellant did not introduce a complete sales ledger showing that it had reported revenue from EU Matic in 2011 and 2012.

[167] The question now is whether the appellant's restated accounts receivable reports for 2012, 2013 and 2014 that were provided to the HST auditor are more reliable. As alluded to earlier, the appellant points to the restated accounts receivable

opening and closing balances because the net impact would result in adjustments that are in the appellant's favour.

[168] To illustrate, for 2013 and based on the balances as reported in the appellant's income tax return, the net impact of deducting the appellant's opening accounts receivable balance of $1,316,762 and adding the appellant's closing accounts receivable balance of $1,692,058 is an upward adjustment of $375,296. But if the restated balances are used, the net impact is a downward adjustment of $75,115 (i.e., −$2,130,051 + $2,054,936).

[169] For 2014, the net impact of deducting the appellant's opening accounts receivable balance of $1,692,058 and adding the appellant's closing accounts receivable balance of $1,814,916 as reported in its income tax return is an upward adjustment of $122,858. But if the restated balances are used, the net impact is a small upward adjustment of $12,840 (i.e., −$2,054,936 + $2,067,776).

[170] I am not convinced that the restated accounts receivable balances are reliable or that they should be used for the bank deposit analysis. There is no clear explanation as to how the appellant came to restate its accounts receivable balances. There is also no explanation about the work that was undertaken. Moreover, the appellant has not supported the restated amounts with backup documentation such as invoices.

[171] Added to these concerns is that the appellant's restated accounts receivable reports imply several further factual outcomes:

a. Restating the appellant's closing accounts receivable balance as of December 31, 2012, implies that the appellant underreported its revenue for the 2012 taxation year.

b. Restating the appellant's closing accounts receivable balances for the 2013 and 2014 taxation years implies that the appellant underreported its revenue for these years since additional debit entries to the receivable account should have corresponding credit entries to the sales account. Also, if an amount remained receivable, it cannot have been received and be among the bank deposits.

c. There is no evidence that the appellant converted its restated accounts receivable balances for any sales in a foreign currency into Canadian currency. This suggests that the restated accounts receivable balances are

> understated, especially because the Canadian dollar was weakening relative to the U.S. dollar and U.K. pounds sterling on a year-over-year basis.

[172] In the circumstances, I prefer to use the as filed amounts (and even though those balances are also understated to the extent that foreign currency amounts were recorded at par). I am doing so even though the Crown did not cross-examine on the restated accounts receivable balances and consented to the documents going into evidence. The absence of cross-examination does not mean the restated balances are reliable.

[173] To summarize, I conclude that no adjustments are warranted in respect of the opening and closing accounts receivable balances.

*(c) **The Appellant's Sale Revenue as Reported is not Disputed***

[174] The evidence is clear that the appellant reported sales revenue of $10,518,113 in its income tax return for the 2013 taxation year and $11,016,805 in its income tax return for the 2014 taxation year. This is not in dispute.

*(d) **Adjustments to GST/HST Collectible***

[175] The CRA deducted GST/HST collectible of $852,946 for 2013 and $896,798 for 2014. The Crown conceded that these amounts should be revised to $853,912.71 for 2013 and $970,925.63 for 2014. The appellant has not established other amounts. I am satisfied that these adjustments are required.

*(e) **Adjustments to the Rate of Exchange for Foreign Currencies***

[176] The CRA did not use the Bank of Canada average annual exchange rates for converting deposits in U.S. dollars and U.K. pounds sterling into Canadian currency. The parties agree, however, that I can take judicial notice of the Bank of Canada annual average exchange rates.

[177] Bank of Canada annual average exchange rates are indicative rates, derived from averages of transaction prices and price quotes from financial institutions. The averaging smooths out the daily fluctuations of exchange rates over the course of a year.

[178] Here, I am in no position to apply the applicable rate of exchange on the date of sale for all the appellant's transactions made in a foreign currency. The appellant has not introduced evidence of an alternative method of converting its revenue from sales in U.S. dollars or U.K. pounds sterling into Canadian currency.

[179] In the particular circumstances of this appeal, using the Bank of Canada annual average exchange rate is an appropriate method to translate the deposits in a foreign currency into Canadian currency for the purpose of the bank deposit analysis. The CRA made an error in applying an annual average rate of exchange for U.K. pounds sterling in 2013 of 1.72. The Bank of Canada annual average rate of exchange for U.K. pounds sterling for 2013 was 1.611266.

[180] I have concluded that the following Bank of Canada annual average rates of exchange should be used:

ROE	2013	2014
U.S. dollar to Canadian dollar	1.029915	1.104466
U.K. pound sterling to Canadian dollar	1.611266	1.819030

(f) ***Revised Net Discrepancy***

[181] Based on my findings above, I have set out the computations to revise the bank deposit analysis in simplified form in Appendix II. The net discrepancy for the 2013 taxation year is $1,774,323.16 of which $502,989.59 is attributable to the foreign currency adjustments and the remainder of $1,271,333.57 is unreported revenue.

[182] The net discrepancy for the 2014 taxation year is $4,254,337.61 of which $1,195,132.86 is attributable to the foreign currency adjustments and the remainder of $3,059,204.75 is unreported revenue.

[183] In the absence of the appellant's sales ledgers showing the basis on which the appellant determined its reported revenue in filing its income tax returns — and broken down by sales in Canadian dollars, U.S. dollars and U.K. pounds sterling — it is not possible to say whether the appellant underreported sales from a particular currency.

(g) ***Additional Comments about the Bank Deposit Analysis***

[184] The appellant referred to the HST audit conclusions, and Mr. Baweja's evidence that the HST auditor did not adjust the appellant's GST/HST collectible. Counsel for the appellant referred to the HST auditor's use of the restated accounts receivable balances as a "ministerial assumption". That may be so in the context of the ETA, but this does not mean anything assumed in the HST audit — whatever that may have been — is presumed true in reassessing here.

[185] The appellant also argued that the evidence showed generally that some of the appellant's expenses were incurred in a foreign currency, but the amounts deducted in computing its income were not converted to Canadian dollars. With a weakening Canadian dollar, this would mean that some of the appellant's expenses or its costs of goods sold were understated.

[186] The difficulty with this argument is that a bank deposit analysis is focused on deposits and revenue; it seeks to determine whether a taxpayer's revenue was understated. It is not a net income analysis. If the appellant wanted to claim additional expenses, including in respect of its costs of goods sold, by converting amounts incurred in a foreign currency into Canadian currency, the appellant should have pleaded this issue and supported it with evidence.

[187] The appellant also argued that the Minister should have undertaken a net worth analysis. But a net worth analysis is an entirely different alternative assessment technique (see also *Kohn v. The Queen*, 2022 TCC 57 at para. 18). A net worth analysis is sometimes used to verify the income of a shareholder. That was not the CRA's objective in reassessing the appellant.

[188] The appellant also rhetorically asks, where is the money if there was so much unreported revenue? This argument lacks merit. An attack against a bank deposit analysis should focus on its elements: whether the deposits have been accurately identified and tabulated, whether there are additional non-revenue deposits that must be deducted, or whether further adjustments are required. In the end, I conclude that no further adjustments to the bank deposit analysis are warranted.

VII. **Assessing After the Normal Reassessment Period Under s. 152(4)(a)(i)**

[189] I next turn to s. 152(4)(a)(i) and whether the Crown has established the statutory requirements for the Minister to reassess after the normal reassessment period. In considering whether the Minister was entitled to reassess the appellant for the 2013 and 2014 taxation years, I must determine whether the appellant made a

misrepresentation in its income tax returns and, if so, whether the misrepresentation was attributable to neglect, carelessness or wilful default.

[190] I have already found that the bank deposit analysis demonstrates that the appellant understated its revenue in the 2013 taxation year by $1,774,323.16 and in the 2014 taxation by $4,254,337.61. Accordingly, I have no hesitation in finding that the appellant made a misrepresentation by underreporting its revenue by these amounts in 2013 and 2014.

[191] Moreover, I have no hesitation in finding that the misrepresentations were attributable to neglect or carelessness, especially because the magnitude of the underreported revenue is substantial.

[192] The evidence is clear that Mr. Baweja was responsible for the day-to-day management and oversight of the appellant's business. Mr. Baweja is well educated, having graduated from the University of Toronto with a degree in commerce, and having obtained his designation as a chartered accountant. He had prior experience, both in operating a retail business and an accounting practice. He was also hard-working. With a relatively modest headcount on the operations side, Mr. Baweja successfully managed to grow the appellant's business. He was also confronted with significant personal obstacles, first with his father's poor health and then his own battle with cancer, which fortunately seems to have been largely resolved in late 2012.

[193] Faced with a growing business, Mr. Baweja did not want a lot of overhead after the 2009 financial crisis. He made the decision to acquire new accounting software that the appellant began using in or around 2010. It also seems clear that the appellant invoiced its customers in the currency of the sales transaction. And so, an invoice going to a U.S. customer, for example, was invoiced in U.S. dollars and payment was made in U.S. dollars.

[194] On one hand, Mr. Baweja testified that he assumed that the sales were being converted because there was a place to enter an exchange rate in the accounting software. But then, on the other hand, he admits that Ms. Lu did not handle currencies too well.

[195] The difficulty that I have with Mr. Baweja's evidence is that the events took place in 2013 and 2014 in the context of a weakening Canadian dollar. Judges are free to use common sense and to apply common knowledge. As a manufacturer purchasing steel and selling product into Canadian, U.S. and U.K. markets,

Mr. Baweja would have been keenly aware of what was happening in the currency markets and the impact on Canadian manufacturers. A weakening Canadian dollar also made the appellant's holdings of U.S. dollars and U.K. pounds sterling more valuable in relation to the Canadian dollar.

[196] What then is revealed by examining the appellant's banking documents?

[197] The appellant commenced 2013 with an opening balance in its U.S. dollar account of USD $1,458,935. But the appellant was also holding a GIC or guaranteed investment certificate of USD $1 million, which matured on January 14, 2013, and was immediately reinvested in another GIC for USD $1 million. The appellant also transferred USD $100,000 to its Canadian dollar account on January 22, 2013, and received a Canadian equivalent of $99,040. In this sense, the Canadian and US dollars were trading roughly around par at the beginning of 2013 (the Canadian dollar was slightly stronger, with a U.S. dollar trading at $0.98590 on January 2, 2013, and $0.99920 on January 31, 2013).

[198] Toward the end of February 2013, however, the appellant transferred USD $100,000 to its Canadian dollar account twice and received the Canadian equivalent of $102,190 and $102,510. The person who would have been responsible for these financial decisions was Mr. Baweja.

[199] Moreover, throughout the rest of 2013, the appellant occasionally transferred U.S. dollars to its Canadian dollar account, each time benefiting from the weakening Canadian dollar. Meanwhile, the appellant maintained a lean balance in its Canadian dollar account but continued to build up funds in its U.S. dollar account. The GIC of USD $1 million matured on April 15, 2013. By the end of April 2013, the appellant was holding approximately USD $2.477 million. And by the end of December 2013, the appellant was holding approximately USD $2.931 million. By December 31, 2013, a U.S. dollar was trading at $1.06360.

[200] In January 2014, the appellant transferred a total of USD $1.2 million to its Canadian dollar account, receiving the Canadian dollar equivalent of $1,288,940. Further transfers were made in 2014. And the appellant ended 2014 with a balance in its U.S. dollar account of USD $3,110,723. The U.S. dollar was then trading at $1.16010.

[201] Even though Mr. Baweja was not cross-examined on the above points, it is self-evident that the weakening Canadian dollar had to be apparent to him.

[202] Moreover, a somewhat similar pattern emerged in the appellant's U.K. pounds sterling account. In December 2013, £400,000 was transferred from the appellant's U.K. pounds sterling account to its Canadian dollar account for the equivalent of $689,860. The beneficial rate of exchange likewise had to be apparent to Mr. Baweja.

[203] Added to this is that the appellant's financial statements contained a note acknowledging that the company was subject to foreign currency risk since the exchange rate on the U.S. dollar sales and purchases were subject to daily fluctuations.

[204] Accordingly, I find that the magnitude of the unreported income and the impact of currency exchange rate fluctuations on the appellant's business, and revenue in particular, had to be apparent. This is further borne out by Mr. Baweja's evidence that the appellant occasionally purchased product in a foreign currency. With Mr. Baweja's education and familiarity with accounting, and his role in the appellant's business, this is impossible to ignore.

[205] Then what happened here? I find that Mr. Baweja, and in turn the appellant, was indifferent as to whether the appellant complied with its tax reporting obligations.

[206] Mr. Baweja testified that he assumed that the software was converting the U.S. sales. But he was far too busy with the operational side of the business to take care in ensuring that Ms. Lu's work was done correctly and accurately, or that she was supervised.

[207] Mr. Baweja acknowledged that there may have been invoices that were entered later, or that might have been missed altogether. He also acknowledged that Ms. Lu was not posting payments to the accounts receivable until later. The evidence is also clear that the appellant was not doing monthly bank reconciliations.

[208] Ms. Lu was the only person taking care of the appellant's accounting functions. She was responsible for the accounts payable. She was responsible for the payroll. And as the appellant's business grew and technology changed, Ms. Lu had increasing demands placed on her to help with the shipping documentation.

[209] When asked whether he had any reason to believe that Ms. Lu did not have enough capacity to track the number of transactions going on in the appellant's

business, Mr. Baweja testified that Ms. Lu would "always say that she was overwhelmed with work" (Transcript, October 8, p. 19).

[210] In response to another question regarding whether steps were taken to verify if Ms. Lu had enough time or needed more support to make sure that money coming in and money going out was properly tracked in the accounting, Mr. Baweja testified that business took priority:

> Mr. Baweja: A. I mean, again, we were overwhelmed with a lot of stuff other than the accounting function. I, as I said that, you know, business took priority to me to make sure, you know, goods were shipped, parts were out, production was taken care of, scheduling was done, employees were, you know, doing their job… (Transcript, October 8, p. 21).

[211] And so, Mr. Baweja candidly admitted that they were all overwhelmed, and Ms. Lu was too. At the same time, Mr. Baweja was trying to be frugal.

[212] In the end, I find that Mr. Baweja was indifferent as to the appellant's tax obligations. He acknowledged that the appellant was late getting the appellant's income tax returns done. He was not prepared to devote resources to support the appellant's bookkeeping — despite having resources available. Ms. Lu's time for bookkeeping was spread too thin from managing her other tasks. In the end, the appellant shirked its responsibilities under a self-reporting tax system.

[213] These conclusions help explain why the appellant has never produced a sales ledger for the sales revenue it reported in its income tax returns for the 2013 and 2014 taxation years. It seems more likely than not that producing the sales ledger would have further confirmed that the appellant had underreported its sales revenue. The details of the specific transactions that went underreported would have been laid bare.

[214] In the circumstances, my finding that Mr. Baweja, and therefore the appellant, was indifferent also means that the Crown has established neglect under s. 152(4)(a)(i), and in particular a lack of reasonable care. It cannot be said, based on the evidence before me, that the appellant thoughtfully, deliberately and carefully assessed the filing of its income tax returns for the 2013 and 2014 taxation years in a manner that it truly believed was correct (see *Paletta* at para. 65).

[215] Accordingly, I find that the Crown has successfully opened the appellant's otherwise statute-barred years in respect of the underreported revenue. My finding

applies to both the foreign currency portion of the net discrepancy revealed by the bank deposit analysis and to the remainder.

[216] I next turn to the Minister's assessment of penalties under s. 163(2), recognizing that the statutory requirements for reassessing a statute-barred year are not the same as the statutory requirements for assessing a gross negligence penalty (see *Deyab* at para. 57).

VIII. **Are Penalties Under s. 163(2) on the Underreported Revenue Justified?**

[217] I must determine whether the Minister was justified in imposing penalties under s. 163(2) regarding the underreported revenue in the appellant's 2013 and 2014 taxation years.

[218] Subsection 163(2) reads in part as follows:

> 163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of …

[219] The ITA is clear that the Minister bears the burden of establishing the facts that justify the assessment of a s. 163(2) penalty: s. 163(3). Accordingly, the Crown must show that the appellant made, or participated in, or assented to, or acquiesced in, the making of a false statement and that the appellant did so knowingly or under circumstances amounting to gross negligence.

[220] Since *Venne*, courts have consistently held that "gross negligence" requires greater neglect than simply failing to exercise reasonable care, which might be sufficient under s. 154(4)(a)(i). Neglect or carelessness should not be confused with gross negligence (*Deyab* at para. 61).

[221] In *Venne*, the Federal Court stated that gross negligence "must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not" (p. 234). Thus, conduct that would justify the assessment of a gross negligence penalty is conduct that is tantamount to intentional acting (*Deyab* at para. 63). It is akin to "burying one's head in the sand" (see *Guindon v. Canada*, 2015 SCC 41 at para. 60).

[222] A court must be extremely cautious in sanctioning the imposition of penalties under s. 163(2). And as acknowledged previously, conduct that warrants the reopening of a statute-barred year does not automatically justify a penalty (see *Deyab* at para. 73, citing *Farm Business Consultants v. The Queen*, [1994] 2 CTC 2450 (TCC) at para. 27).

[223] Having noted the applicable statutory requirements and prior judicial guidance on the imposition of a penalty under s. 163(2), I return to my earlier findings.

[224] Mr. Baweja, and therefore the appellant, was indifferent as to the appellant's tax obligations. Mr. Baweja knew that Ms. Lu was overwhelmed with her work responsibilities. He was not supervising her work. He was also not prepared to devote resources to support the appellant's bookkeeping despite seemingly having resources available. The outcome was that Ms. Lu's time for bookkeeping compared to her other tasks was spread too thin and the appellant shirked its reporting obligations. This all leads me to conclude that the appellant in effect buried its head in the sand and was grossly negligent.

[225] In the end, I am satisfied that the Crown has met the burden of justifying the imposition of penalties under s. 163(2) on the unreported revenue. The penalties will, however, need to be recomputed on the basis that the appellant understated its revenue, and therefore income, in 2013 by the amount of $1,774,323.16 and in 2014 by the amount of $4,254,337.61.

IX. **Are Penalties under s. 163(2) on the Disallowed Expenses Justified?**

[226] The Minister assessed penalties under s. 163(2) on the deductions that were disallowed in the 2013 and 2014 taxation years. To situate this issue in context, additional details are necessary.

[227] In reassessing, the Minister disallowed the following deductions:

Disallowed Amounts	2013	2014
Insurance	$30,151	$40,536
Salaries & Wages	$201,352	$379,099
Commissions	$86,287	$89,450

CCA – Class 43	$41,419	$105,623

[228] In accordance with the amended partial consent to judgment, the parties agree that:

a. the appellant should be allowed additional deductions, and the remainder is properly disallowed, as follows:

Re 2013 Taxation Year	Allow Additional	Disallowed
Insurance	$19,020	$11,131
Salaries & Wages	$12,378	$188,974
Commissions	$14,990	$71,297
CCA – Class 43	$6,846	$34,573

Re 2014 Taxation Year	Allow Additional	Disallowed
Insurance	$26,217	$14,319
Salaries & Wages	$136,689	$242,410
CCA – Class 43	$51,192	$54,431

b. the Minister properly disallowed commission expenses claimed in the 2014 taxation year of $89,450; and

c. the appellant's end of year UCC balance for Class 43 assets at the end of the 2014 taxation year is to be restated from $272,012 to $523,305.

[229] The issue is whether penalties under s. 163(2) are applicable on the expenses and CCA that continue to be disallowed under the amended partial consent to judgment. I have concluded that penalties under s. 163(2) are not applicable.

[230] Simply put, the evidence was focused on the bank deposit analysis and the question of whether the appellant had underreported its revenue. The circumstances relating to the deductions claimed by the appellant in filing its income tax returns were thus eclipsed by more significant issues.

[231] Moreover, when counsel for the Crown cross-examined Mr. Baweja on some of the deductions that were disallowed, Mr. Baweja was steadfast in his view that

the appellant had incurred the amounts that were disallowed and that he considered the matter to be about whether the appellant had provided adequate supporting documentation. It struck me that a compromise was made as to the amounts that would continue to be disallowed.

[232] In the end, I know very little about the deductions that were claimed and remain disallowed. The Crown did not make inroads in cross-examining Mr. Baweja about the deductions and did not cross-examine Ms. Lu.

[233] As stated earlier, conduct that warrants the reopening of a statute-barred year does not automatically justify a penalty. Plus, penalties under s. 163(2) should not be upheld in a perfunctory manner. In the circumstance, the Crown has not met the burden of establishing that penalties apply to the deductions that remain disallowed.

X. **Late-Filing Penalties Under s. 162**

[234] As stated in the overview, the Crown agreed to abandon the repeat late-filing penalty assessed under s. 162(2) in the 2013 taxation year. And the appellant agreed that a late-filing penalty under s. 162(1) was applicable in the 2014 taxation year, recognizing, however, that the penalty must be recomputed based on the outcome here.

XI. **Conclusion**

[235] On the basis of the forgoing, the appeals are allowed and the reassessments for the 2013 and 2014 taxation years are referred back to the Minister for reconsideration and reassessment in accordance with these reasons.

XII. **Costs**

[236] The parties shall have until February 6, 2026, to reach an agreement on costs, failing which the Crown shall have until March 6, 2026, to serve and file written submissions on costs and the appellant shall have until April 3, 2026, to serve and file a written response submissions on costs. Any submissions shall not exceed five pages. If the parties do not advise the Court that they have reached an agreement and no submissions are received, costs shall be awarded to the Crown as set out in the Tariff.

Signed this 6th day of January 2026.

"Perry Derksen"

Derksen J.

Appendix I: CRA's Bank Deposit Analysis Simplified

2013	Amount	ROE	CDN
Bank Deposits:			
RBC CAD	$11,756,913.28	1.000000	$11,756,913.28
RBC USD	USD$5,964,281.81	1.030084	$6,143,711.26
RBC GBP	£628,855.69	1.720000	$1,081,631.79
Total Net Deposits:			$18,982,256.33
Deduct Non-revenue Deposits:			
Non-revenue CDN Deposits	$4,081,987.50	1.000000	-$4,081,987.50
Non-revenue USD Deposits	USD$2,000,000.00	1.030084	-$2,060,168.00
Deduct Opening AR:			-$1,316,762.00
Add Ending AR:			$1,692,058.00
Total Accrued Deposits:			$13,215,396.83
Deduct Sales Revenue Reported			-$10,518,113.00
Discrepancy:			$2,697,283.83
Deduct HST Collectible			-$852,946.00
Net Discrepancy in Sales Revenue:			**$1,844,337.83**
Discrepancy attributable to FX:			
RBC USD	USD$5,964,281.81		
Deduct Non-revenue USD Dep.	USD$2,000,000.00		
Total Net Deposits	USD$3,964,281.81	1.030084	$4,083,543.26
Difference attributable to FX			**$119,261.45 (A)**
RBC GBP	£628,855.69	1.720000	$1,081,631.79
Difference attributable to FX			**$452,776.10 (B)**
Total attributable to FX (A+B):			**$572,037.55**
Remainder of Variance			**$1,272,300.28**
Net Discrepancy in Sales Revenue			**$1,844,337.83**

2014	**Amount**	**ROE**	**CDN**
Bank Deposits:			
RBC CAD	$10,973,825.43	1.000000	$10,973,825.43
RBC USD	USD$5,672,958.77	1.104347	$6,264,915.00
RBC GBP	£735,628.18	1.818736	$1,337,913.45
Total Net Deposits:			$18,576,653.88
Deduct Non-revenue Deposits:			
Non-revenue CDN Deposits	$2,208,335.00	1.000000	-$2,208,335.00
Deduct Opening AR:			-$1,692,058.00
Add Ending AR:			$1,814,916.00
Total Accrued Deposits:			$16,491,176.88
Deduct Sales Revenue Reported			-$11,016,805.00
Discrepancy:			$5,474,371.88
Deduct HST Collectible			-$896,798.00
Net Discrepancy in Sales Revenue:			**$4,577,573.88**
Discrepancy attributable to FX:			
RBC USD	USD$5,672,958.77	1.104347	$6,264,915.00
Difference attributable to FX			**$591,956.23 (A)**
RBC GBP	£735,628.18	1.818736	$1,337,913.45
Difference attributable to FX			**$602,285.27 (B)**
Total attributable to FX (A+B):			**$1,194,241.50**
Remainder of Variance			**$3,383,332.38**
Net Discrepancy in Sales Revenue			**$4,577,573.88**

Appendix II: Revised Bank Deposit Analysis Simplified

2013	Amount	ROE	CDN
Bank Deposits:			
RBC CAD	$11,756,913.28	1.000000	$11,756,913.28
RBC USD	USD$5,964,281.81	1.029915	$6,142,703.30
RBC GBP	£628,855.69	1.611266	$1,013,253.79
Total Net Deposits:			$18,912,870.37
Deduct Non-revenue Deposits:			
Non-revenue CDN Deposits	$4,081,987.50	1.000000	-$4,081,987.50
Non-revenue USD Deposits	USD$2,000,000.00	1.029915	-$2,059,830.00
Deduct Opening AR:			-$1,316,762.00
Add Ending AR:			$1,692,058.00
Total Accrued Deposits:			$13,146,348.87
Deduct Sales Revenue Reported			-$10,518,113.00
Discrepancy:			$2,628,235.87
Deduct HST Collectible			-$853,912.71
Net Discrepancy in Sales Revenue:			**$1,774,323.16**
Discrepancy attributable to FX:			
RBC USD	USD$5,964,281.81		
Deduct Non-revenue USD Dep.	USD$2,000,000.00		
Total Net Deposits	USD$3,964,281.81	1.029915	$4,082,873.30
Difference attributable to FX			**$118,591.49 (A)**
RBC GBP	£628,855.69	1.611266	$1,013,253.79
Difference attributable to FX			**$384,398.10 (B)**
Total attributable to FX (A+B):			**$502,989.59**
Remainder of Variance			**$1,271,333.57**
Net Discrepancy in Sales Revenue			**$1,774,323.16**

2014	Amount	ROE	CDN
Bank Deposits:			

RBC CAD	$10,973,825.43	1.000000	$10,973,825.43
RBC USD	USD$5,672,958.77	1.104466	$6,265,590.08
RBC GBP	£735,628.18	1.819030	$1,338,129.73
Total Net Deposits:			$18,577,545.24
Deduct Non-revenue Deposits:			
Non-revenue CDN Deposits	$2,208,335.00	1.000000	-$2,208,335.00
Add'l Non-revenue CDN Deposit	250,000.00	1.000000	-$250,000.00
Deduct Opening AR:			-$1,692,058.00
Add Ending AR:			$1,814,916.00
Total Accrued Deposits:			$16,242,068.24
Deduct Sales Revenue Reported			-$11,016,805.00
Discrepancy:			$5,225,263.24
Deduct HST Collectible			-$970,925.63
Net Discrepancy in Sales Revenue:			**$4,254,337.61**
Discrepancy attributable to FX:			
RBC USD	USD$5,672,958.77	1.104347	$6,265,590.08
Difference attributable to FX			**$592,631.31 (A)**
RBC GBP	£735,628.18	1.819030	$1,338,129.73
Difference attributable to FX			**$602,501.55 (B)**
Total attributable to FX (A+B):			**$1,195,132.86**
Remainder of Variance			**$3,059,204.75**
Net Discrepancy in Sales Revenue			**$4,254,337.61**

CITATION:	2026 TCC 2
COURT FILE NO.:	2022-1281(IT)G
STYLE OF CAUSE:	PREMIER FASTENERS INC. v. HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 7, 8 and 9, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice Perry Derksen
DATE OF JUDGMENT:	January 6, 2026

APPEARANCES:

Counsel for the Appellant:	Leigh Somerville Taylor Jennifer Dell'Aquila
Counsel for the Respondent:	Robert Zsigo

COUNSEL OF RECORD:

For the Appellant:

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