

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140128**

**Docket: A-206-13**

**Citation: 2014 FCA 20**

**CORAM: PELLETIER J.A.  
TRUDEL J.A.  
MAINVILLE J.A.**

**BETWEEN:**

**9100-8649 QUÉBEC INC.**

**Appellant**

and

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Montréal, Quebec, on January 28, 2014.

Judgment delivered from the Bench at Montréal, Quebec, on January 28, 2014.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Montréal, Quebec, on January 28, 2014.)

**TRUDEL J.A.**

[1] This is an appeal from a decision by Justice Favreau of the Tax Court of Canada (the judge) in which he dismissed with costs an appeal against an assessment issued under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act) for the period from January 1, 2006, to December 31, 2008 (2013 TCC 160).

[2] The appellant operates two licensed restaurants.

[3] During an audit undertaken by Revenu Québec, certain discrepancies emerged, including discrepancies between amounts relating to the purchase of beer, wine and sake and the reported sales of these products. Hence, an auditor from Revenu Québec decided to apply an alternative audit method in order to determine the company's actual financial situation. The alternative method selected consisted of [TRANSLATION] "reconstructing the appellant's sales from its purchases by the application of a fixed ratio to certain items calculated on the basis of a sampling of invoices" (Appeal Book, Auditor's Report, page 70).

[4] The auditor thus found a discrepancy of \$3,167,703.82 in income for the three audit years. This is the amount on which the assessment, interest and penalty were based, and the assessment was upheld by the judge.

[5] The appellant submits before this Court that the judge erred in law and in fact by accepting that Revenu Québec had been justified in applying an alternative method. It argues that the method in question is a method of last resort that should not be used in cases where the taxpayer has submitted all of its purchase and sales documents and documents in support of its tax returns. It also submits that the judge erred in law in imposing too light a burden on the respondent and too heavy a burden on the appellant. The judge is also said to have committed palpable and overriding errors in the appreciation of the evidence and erred in upholding the application of the penalty provided for by section 285 of the Act. According to the appellant, the discrepancy between the number of litres of alcohol purchased and the number of litres sold could not reasonably have supported the conclusion that the missing litres of alcohol had been sold but not reported and were subject to tax remittances.

[6] We are all of the view that this appeal cannot succeed. We are no more convinced than the judge by the appellant's argument that the application of the alternative audit method was inappropriate given the appellant's explanation that the lack of profit on the alcoholic beverages was attributable to the employees' consumption of alcohol during and after working hours; this explanation implies that the employees were consuming, among other things, 60% to 85% of the beer purchased by the company for both restaurants.

[7] Nor are we persuaded that the judge has not followed the law in the application of the evidence or that he committed reviewable errors of fact.

[8] The judge noted that the appellant had made no submissions with respect to the penalty during the hearing. The issue of the penalty was not raised in its notice of appeal, and neither was an argument raised at the hearing before this Court to the effect that it would not have been reasonable for the auditor to make the assessment on the basis of a ratio of \$285.00 per litre. We note that at paragraph 49 of his reasons, the judge wrote that the appellant had not challenged any of the steps of the alternative method applied. The appellant is therefore precluded from doing so on appeal.

[9] Accordingly, the appeal will be dismissed with costs.

“Johanne Trudel”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-206-13

**STYLE OF CAUSE:** 9100-8649 QUÉBEC INC. v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JANUARY 28, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** **PELLETIER J.A.**  
TRUDEL J.A.  
MAINVILLE J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

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