

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140603**

**Docket: A-201-13**

**Citation: 2014 FCA 147**

**CORAM: TRUDEL J.A.  
SCOTT J.A.  
BOIVIN J.A.**

**BETWEEN:**

**GEORGE L. BOROS**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Ottawa, Ontario, on June 3, 2014.

Judgment delivered from the bench at Ottawa, Ontario, on June 3, 2014.

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

**TRUDEL J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Ottawa, Ontario, on June 3, 2014.)**

**TRUDEL J.A.**

[1] This is the appeal of Mr. Boros (or the appellant) from a judgment of a judge of the Tax Court of Canada (the judge) delivered orally on May 2, 2013, in docket 2011-3621 (IT)I.

[2] The judge rejected most of the arguments put forward by Mr. Boros, who was appealing the reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act), for his 2005, 2006 and 2007 taxation years.

[3] More particularly, the reassessments were made using the net worth method. Before the Tax Court of Canada, Mr. Boros alleged that the estimation of his income for the years in question was incorrect in that the calculation of the change in his net worth was wrong; he should have been allowed the business expenses he had claimed, and the proportion of business use he had claimed for his motor vehicle and his home should not have been reduced.

[4] The judge was of the view that the errors alleged by Mr. Boros were essentially questions of fact (judge's reasons at paragraph 5). Having noted that Mr. Boros had not provided evidence on certain elements of his case (*ibidem* at paragraphs 8 and 87), the judge preferred the testimony of the Canada Revenue Agency auditor to that of Mr. Boros with respect to Mr. Boros's expenses (*ibidem* at paragraph 48). More specifically, the judge questioned Mr. Boros's credibility and gave several examples in support of his conclusion (*ibidem* at paragraph 69).

[5] The judge's conclusions of fact easily led him to the conclusion that the assessment for the 2005 taxation year, although it was made beyond the prescribed time, was justified in light of Mr. Boros's careless error (*ibidem* at paragraph 101). The judge also upheld the penalties imposed by the Minister of National Revenue, although he adjusted them to take into account the principal payments on the motor vehicle (*ibidem* at paragraph 116).

[6] On appeal before this Court, Mr. Boros identified four errors allegedly made by the judge. First, the judge was wrong in referring his case back to the Minister in order to allow the appellant, if he wished to do so, to claim capital cost allowance for his car. Second, the judge should not have accepted the assessments made using the net worth method. Third, the judge erred in concluding that the assessment for 2005 was justified. Fourth, the judge was wrong in concluding that the appellant was liable to penalties for gross negligence under subsection 163(2) of the Act in the absence of any evidence of carelessness or intent.

[7] We are all of the opinion, after careful analysis of the file and consideration of Mr. Boros's written and oral arguments, that the appeal must be dismissed. Considering the applicable standard of review in this case (see *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235), we are not satisfied that the decision of the Tax Court of Canada contains a palpable and overriding error warranting this Court's intervention.

[8] The first error alleged by Mr. Boros is clearly based on a misunderstanding of the impact of a claim of capital cost allowance with respect to business use of his motor vehicle. As the respondent argues, the deduction of capital cost allowance would lead to a reduction in the amount of tax payable by the appellant, and not the opposite. Moreover, the appellant failed to establish how the judge exceeded his jurisdiction by offering him the possibility of claiming this deduction.

[9] Regarding the second alleged error, the appellant's argument must fail with respect to both the appropriateness of the net worth method and the application of this method to the facts

of this case. The mere fact that the appellant filed his income tax returns is insufficient to preclude the application of the net worth method, especially if these returns misrepresented his income. Concerning the allegedly incorrect application of the net worth method, the appellant merely repeats the arguments presented before and rejected by the judge. The appellant did not establish any palpable and overriding errors in the judge's findings of fact. Lastly, the argument regarding family property cannot succeed. The judge concluded, at paragraphs 35 and 37 of his reasons, that the value of the house and of the motor vehicle, two assets that could be included in family property, had no effect on the determination of net worth given that the appellant owned both assets during the entire period that was audited. In light of these facts, and considering the wording of subsection 152(7) of the Act, the judge was justified in accepting the Minister's use of the net worth method.

[10] As regards the third alleged error, there is no reason to intervene here either. It was up to the appellant to establish that his projected income for the 2005 taxation year was incorrect by providing supporting evidence of his income.

[11] Lastly, regarding the penalties, the judge properly understood the criteria to be met in order for him to be able to find that there was gross negligence resulting from wilful blindness (see *Venne v. Canada (Minister of National Revenue - M.N.R.)*, [1984] F.C.J. No. 314, 84 DTC 6247, page 6256, and *Panini v. Canada*, 2006 FCA 224, [2006] F.C.J. No. 955, paragraphs 41 to 43). On the basis of the record, he could draw the conclusion that Mr. Boros was wilfully blind (judge's reasons at paragraph 111) with respect to the amount of his income and the deductions claimed for his travel and motor vehicle expenses. Contrary to the appellant's argument, the

judge had good grounds, in particular, for considering the significance of the adjustment and the gap between the expenses claimed and those that were ultimately allowed.

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

“Johanne Trudel”

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J.A.

Certified true translation  
Erich Klein

**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-201-13

**STYLE OF CAUSE:** GEORGE L. BOROS v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING :** OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 3, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** TRUDEL J.A.  
SCOTT J.A.  
BOIVIN J.A.

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

**APPEARANCES:**

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