Docket: 2012-2889(IT)G

BETWEEN:

OBARO OKOROZE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 12, 13 and 14, 2015, at Montreal, Quebec.

Before: The Honourable Justice Paul Bédard, Deputy Judge

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Alain Gareau

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2004, 2005, 2006, 2007 and 2008 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Montreal, Quebec, this 30th day of March 2015.

"Paul Bédard"

Bédard D.J.

Citation: 2015 TCC 64
Date: 20150330
Docket: 2012-2889(IT)G

BETWEEN:

OBARO OKOROZE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard D.J.

[redacted] The Minister of National Revenue (the "Minister") issued notices of reassessment dated February 14, 2011 with regard to the Appellant's 2004 to 2008 taxation years (the "relevant period"), adding to the Appellant's income the following amounts:

	2004	2005	2006	2007	2008
Undeclared income	$166,653	$75,490	$147,346	$51,939	$53,463
Conferred benefits	$18,768	$338,812	$354,748	$70,218	$13,917
Adjustment to rental expenses	($314)	$6,205	$7,790	($677)	($713)
Total	$185,107	$420,507	$509,884	$121,480	$66,667

In addition, a penalty was assessed under subsection 163(2) of the *Income Tax Act* for each of those years. The Minister also reassessed the Appellant for his 2009 taxation year, lowering the capital gain declared by the Appellant. The reassessments for the years 2004 to 2007 inclusively were made after the normal reassessment period. The Appellant disputes those reassessments.

[redacted]I note immediately that the Minister used the net worth method to determine that the Appellant failed to declare taxable income during the relevant period. He determined that part of the Appellant's income was attributable to benefits conferred on the Appellant by his corporations.

[redacted]In computing the tax owed by the Appellant for the relevant period, the Minister relied on the following assumptions of fact:

I – Net worth

(a) During the years in litigation, the Appellant and his wife, Marlene Dixon, reported the following income:

	Appellant	**Mrs. Dixon**	**Total**
2004	$46,678	$27,005	$73,683
2005	$48,668	$30,026	$78,694
2006	$56,600	$44,179	$100,779
2007	$7,409	$38,344	$45,753
2008	$15,072	$28,916	$43,988

(b) The couple's personal expenses for the years 2004 to 2008, notwithstanding expenses paid for by the Appellant's corporations, amounted to $65,615, $103,763, $124,984, $98,793 and $85,423 respectively.

(c) In 2001, the Appellant and his wife purchased a duplex in LaSalle for $155,000 with a mortgage of $116,625. They lived in one apartment and rented the other one.

(d) The LaSalle duplex was refinanced in April 2004 in the amount of $174,750.

(e) In July 2004, the Appellant and his wife purchased a house in Dollard-des-Ormeaux for $270,070.

(f) Both apartments of the duplex in LaSalle were then rented from July 2004 onward.

(g) In April 2006, the Appellant and his wife purchased a house in Île Bizard for $545,780.

(h) The house in Dollard-des-Ormeaux was then rented.

(i) In 2007, the Appellant had a pool installed at his residence of l'Île Bizard at a cost of $29,900.

(j) During the years in litigation, the Appellant and his wife held registered and unregistered investments with the Royal Bank of Canada, the Caisse Populaire Desjardins and the TD Bank (see schedule V, page 7 of Annex A).

(k) For the same period, the Appellant and his wife had bank accounts with the Royal Bank of Canada, the Caisse Populaire Desjardins, the Scotia Bank and the TD Bank (see schedule I, page 3 of Annex A).

(l) During the pertinent period, the Appellant was the shareholder of three corporations: Divine Links Ltd., 9155-6993 Quebec inc. (Salon Suprême de coiffure) ("9155") and Boutique belles Plumes Inc. ("Belles Plumes").

(m) Divine Links Ltd. was incorporated in July 2000.

(n) 9155 was incorporated in April 2005. Its address was 1468 Schevchenko Blvd. in LaSalle.

(o) Belles Plumes was incorporated in Mai [*sic*] 2005. Its address was 1464 Schevchenko Blvd. in LaSalle.

(p) Both 9155 and Belles Plumes have never filed income tax returns.

(q) Through Divine Links Ltd., the Appellant operated *Moneygram* counters which offered money transfer services.

(r) The *Moneygram* counters operated by the Appellant through Divine Links Ltd. were located at the following addresses:

- 7924 George Street, LaSalle until February 2003;
- 4178 Grande-Allée, Greenfield Park in May 2004;
- 6680 St-Jacques Street West, Montreal from May to September 2004;
- 1411 Dollard, LaSalle from December 2004 to June 2006;
- 6087 St-Jacques Street West, Montreal from April to November 2005;

- 6815 Transcanada Highway, Unit G8, Pointe-Claire from April 2005 to June 2006;

- 1464 Shevchenko Blvd., Lasalle from April 2005 to December 2006.

(s) Divine Link [*sic*] Ltd's *Moneygram* counters were closed in December 2006.

(t) From February 2007 to July 2008, the Appellant operated a *Moneygram* counter on the premises of the corporation Salon Suprême d'électrolyse ("SSE").

(u) SSE was located at 1468 Schevchenko Blvd., LaSalle.

(v) SSE's apparent shareholder was Shanniel Powell, the Appellant's sister-in-law.

(w) Shanniel Powell worked for the Appellant with regard to the *Moneygram* counter operated on the premises of SSE.

(x) During the years in litigation, the following transactions were recorded by *Moneygram* for the counters operated by the Appellant:

Corporation	Divine Links	Divine Links	Divine Links	SSE	SSE
Year:	2004	2005	2006	2007	2008
Money received					
Amounts received	N/A	$2,192,412	$1,220,699	$482,778	$105,749
Number of transactions	N/A	1 201	512	214	47
Money sent					
Amounts sent	N/A	$0	$179,388	$65,640	$3,063
Number of transactions	N/A	28	3	110	

(y) When a client used *Moneygram*'s services, the amount to be remitted to the recipient was transferred by *Moneygram* to Divine Links Ltd.'s or SEE's [*sic*] bank account.

(z) The corporations then issued cheques in the name of the Appellant (Divine Links Ltd.) or Shanniel Powell (SSE) for the same amount as the transfers.

(aa) During the years 2003 to 2008, the Appellant had six personal bank accounts.

(bb) The Appellant cashed the cheques issued by the Corporations to himself (Divine Links Ltd.) or Shanniel Powell (SSE).

(cc) In March 2008, *Moneygram* informed the Royal Canadian Mounted Police ("RCMP") that clients had filed complaints about different *Moneygram* counters operating in the Montreal area.

(dd) *Moneygram* determined that there had been fraudulent transactions at *Moneygram* counters operated by Divine Links Ltd. and SSE.

(ee) Complaints concerning Divine Links and SSE totalled, from 2004 to 2004, the following respective amounts: $13,600, $405,310, $287,412, $68,200 and $1,700.

(ff) Of these amounts, $296,898 in 2005 and $184,618 in 2006 were kept by the Appellant.

(gg) On July 9, 2008, the RCMP searched the premises located at 1468 Schevchenko Blvd. in LaSalle.

(hh) On the premises, the RCMP found 41 letters addressed to individuals in the United-States [*sic*] of America informing them that they had won a lottery draw and should send funds needed to claim their winnings.

(ii) For the years 2004 to 2008, there exists [*sic*] discrepancies between the Appellant [*sic*] family's declared income and the family's net worth in the respective amounts of $185,107, $420,507, $509,884, $121,480 and $66,667.

II – Benefits conferred

(jj) Between 2005 and 2008, Belles Plumes had two bank accounts, one with the Royal Bank of Canada and one with the Caisse Populaire Desjardins.

(kk) The Appellant withdrew funds in cash and with cheques from the corporation's bank accounts.

(ll) The withdrawals made by the Appellant from Belle Plume's [*sic*] bank accounts for the years 2005, 2006 and 2007 totalled the respective amounts of $11,866, $13,826 and $8,680.

(mm) The funds so withdrawn were not used for the business activities of Belles Plumes.

(nn) Between 2005 and 2008, 9155 had two bank accounts with the Royal Bank of Canada.

(oo) The Appellant withdrew funds in cash and with cheques from the corporation's bank accounts.

(pp) The withdrawals made by the Appellant from 9155's bank accounts for the years 2005, 2006 and 2007 totalled the respective amounts of $2,100, $127,238 and $20,512.

(qq) The funds so withdrawn were not used for the business activities of 9155.

(rr) 9155 paid for the Appellant's personal expenses in the amounts of $6,495 in 2007 and $4,473 in 2008.

Divine Links Ltd.

(ss) During the years in litigation, Divine links [*sic*] Ltd. paid for the rental, maintenance and insurance of motor vehicles.

(tt) Such rental expenses amounted, from 2004 to 2008, to the respective amounts of $18,768, $27,949, $29,067, $16,189 and $9,444.

(uu) During that period, the Appellant and his wife did not own a motor vehicle and started leasing one only in July 2008.

(vv) The motor vehicles rented by Divine Links Ltd. were used by the Appellant and his wife.

(ww) The motor vehicles rented by Divine Links Ltd. were not used for the purpose of gaining income.

(xx) For the years 2005 and 2006, *Moneygram* transferred to Divine Link [*sic*] Ltd.'s bank account amounts totalling respectively $405,310 and $287,412 that were not remitted to the intended recipients.

(yy) Divine Links Ltd. issued cheques in the Appellant' [*sic*] name.

(zz) The Minister determined that the Appellant made unexplained deposits in his bank accounts totalling $108,412 and $102,794 respectively for the years 2005 and 2006.

(aaa) The amounts representing the balance between the amounts not remitted to the intended recipients and the unexplained deposits in the Appellant [*sic*] bank accounts ($296,898 and $184,342) were kept by the Appellant.

III – Rental income adjustments

(bbb) Until July 2004, the Appellant and his wife owned a duplex in LaSalle where they occupied one of the apartments and rented the other.

(ccc) In July 2004 they purchased a house in Dollard-des-Ormeaux and rented both apartments of their duplex.

(ddd) The Appellant and his wife remortgaged the duplex in order to make a down payment for the purchase of their personal home.

(eee) The Appellant and his wife claimed as rental expense [*sic*] the interests [*sic*] paid on the mortgage obtained on the duplex including the interest paid on the portion of the loan used to purchase their personal home.

(fff) The Minister accepted all rental expenses claimed from 2004 to 2008 except the portion of interest paid and claimed by the Appellant and his wife which relates to the part of the mortgage used to purchase their personal home.

[redacted]In computing the tax owed by the Appellant for the 2009 taxation year, the Minister relied on the following assumptions of fact:

(a) During the year 2009, the Appellant and his wife co-owned a duplex in LaSalle and a house in Dollard-des-Ormeaux.

(b) Both immoveables were sold in 2009.

(c) The Appellant declared 100% of the capital gain resulting from the sale of the duplex in LaSalle ($60,770) and 50% of the capital gain resulting from the sale of the house in Dollard-des-Ormeaux ($4,856) for a total capital gain of $65,626.

(d) The Appellant is entitled of 50% of the capital gain resulting from the sale of each immoveables [*sic*].

(e) The Appellant's total capital gain resulting from the sale of both immoveables in 2009 is $32,813.

[redacted]To determine that the Appellant had, in filing his returns for the years 2004 to 2007, made a misrepresentation that was attributable to neglect, carelessness or wilful default, the Minister relied on the following assumptions of fact:

(a) The facts contained in paragraph 30 of the present Reply to the Notice of Appeal.

(b) The Appellant knew or ought to have known that his family's personal expenses were incompatible with the family's declared income.

(c) The amounts assessed are important in light of the Appellant's and his wife's declared income.

[redacted]To determine that the Appellant knowingly, or under circumstances amounting to gross negligence, made a false statement or omission in his income tax returns for the taxation years 2004 to 2008, the Minister relied on the following assumptions of fact:

(a) The facts contained in paragraphs 30 and 32 of the present Reply to the Notice of Appeal.

[redacted]I note that no evidence, allegation, submission and/or conclusion has been put forward by the Appellant with respect to the fact that:

(i) The notices of reassessment for the 2004 to 2007 taxation years inclusively were issued beyond the normal reassessment period.

(ii) The penalty for gross negligence was applied by the Minister for the 2004 to 2008 taxation years inclusively.

(iii) The Minister added to the Appellant's income for the 2005 and 2006 taxation years the respective amounts of $6,205 and $7,790 as rental income.

(iv) The Minister reassessed the Appellant for his 2009 taxation year, lowering the capital gain declared by Appellant.

[redacted]Essentially, the Appellant's contentions are as follows:

Ms. Robitaille's conduct

(i) Ms. Robitaille conducted her investigation with malicious intent. For example, he claims that she used forged documents (namely Exhibits A-2, A-3, A-4, A-5 and A-25) in her investigation and that she knew they were forged. The Appellant also claims that he was entrapped by Mr. Capone. Consequently, he contends that the net worth assessment cannot stand because of these wrongdoings.

Foreign assets

(ii) Ms. Robitaille did not take into account the fact that, at the beginning of the relevant period, he owned foreign assets ("cash assets") totalling around $100,000.

Benefits conferred by SSE

(iii) No benefit was conferred on him by SSE from February 2007 to July 2008 since he was not a shareholder of SSE during that period.

Benefits conferred by Divine

(iv) For the years 2005 and 2006, the amounts totalling $405,310 and $287,412 respectively transferred by Moneygram to Divine were remitted to the intended recipients and consequently cannot be considered as shareholder benefits conferred on him by Divine.

Personal expenses paid by the corporation

(v) Personal expenses that were paid with a corporate credit card were reimbursed by him and consequently cannot be considered as a benefit conferred by a corporation on a shareholder.

Motor vehicle expenses

(vi) The motor vehicles rented by Divine were used for the purpose of earning income. He added that Ms. Robitaille did not take into account the fact that one of the motor vehicles was subleased by Divine to a third party.

Analysis

Burden of Proof

First of all, the Court must consider the burden of proof, which is on the Appellant in his appeals. My colleague Judge Tardif had occasion to consider the burden of proof in a matter that involved a net worth evaluation, as is here the case.

In *Bastille v. The Queen*, 96-4370(IT)G, December 9, 1998, 99 DTC 431, [1999] 4 C.T.C. 2155, he wrote, at paragraph 5 ff.:

> [5] I think it is important to point out that the burden of proof rests on the appellants, except with respect to the question of the penalties, where the burden of proof is on the respondent.
>
> [6] A NET WORTH assessment can never reflect the kind of mathematical accuracy that is both desired and desirable in tax assessment matters. Generally, there is a certain degree of arbitrariness in the determination of the value of the various elements assessed. The Court must decide whether that arbitrariness is reasonable.
>
> [7] Moreover, use of this method of assessment is not the rule. It is, in a way, an exception for situations where the taxpayer is not in possession of all the information, documents and vouchers needed in order to carry out an audit that would be more in accordance with good auditing practice, and most importantly, that would produce a more accurate result.
>
> [8] The bases or foundations of the calculations done in a net worth assessment depend largely on information provided by the taxpayer who is the subject of the audit.
>
> [9] The quality, plausibility and reasonableness of that information therefore take on absolutely fundamental importance.

Another of my colleagues, Judge Bowman (as he then was), made the following comments in *Ramey v. The Queen*, [1993] T.C.J. No. 142 (QL), [1993] 2 C.T.C. 2119, 93 DTC 791 (at p. 793 DTC):

> I am not unappreciative of the enormous, indeed virtually insuperable, difficulties facing the appellant and his counsel in seeking to challenge net worth assessments of a deceased taxpayer. The net worth method of estimating income is an unsatisfactory and imprecise way of determining a taxpayer's income for the year. It is a blunt instrument of which the Minister must avail himself as a last resort. A net worth assessment involves a comparison of a taxpayer's net worth, i.e., the

> cost of his assets less his liabilities, at the beginning of a year, with his net worth at the end of the year. To the difference so determined there are added his expenditures in the year. The resulting figure is assumed to be his income unless the taxpayer establishes the contrary. Such assessments may be inaccurate within a range of indeterminate magnitude but unless they are shown to be wrong they stand. It is almost impossible to challenge such assessments piecemeal. The only truly effective way of disputing them is by means of a complete reconstruction of a taxpayer's income for a year. A taxpayer whose business records and method of reporting income are in such a state of disarray that a net worth assessment is required is frequently the author of his or her own misfortunes. . . .

[redacted] Another of my colleagues, Judge Hershfield, made the following comments in *Zheng v. The Queen*, 2012 DTC 1133:

> [9] While the jurisprudence in this area does not require the Minister to establish the existence of an alleged business or other source of the unreported income, it is worth noting that the Appellant adamantly denied being involved in any business or activity of the nature described in the Reply.
>
> [10] I accept her testimony on this point. I believe that it is improbable that the Appellant was in fact personally involved in the alleged activity. Further, I note that the basis for the assumption of a criminal activity was, according to the Respondent's witness, nothing more than a tip that does not appear to have been followed up in any way other than it giving rise to the assessment under appeal. I cannot help but doubt, in this case, the reliability of such a tip. Acting on what might be in this case, an unsupported tip, as the basis for putting a taxpayer through the onerous and difficult task of defending against a net worth assessment is a bit disconcerting. Still, once the assessment is made, and the basis for calculating the unreported income is particularized, the taxpayer is required to demonstrate errors in the methodology employed and/or errors in respect of the calculation of itemized asset growth inclusions and specific expenditures and/or errors in the assumption that such asset growth and such expenditures were funded by unreported income.
>
> [11] Accordingly, regardless that I find that the business source alleged by the Respondent has been refuted, that does not absolve her of the responsibility to account for the increases in her net worth in a manner that would demonstrate that they are not, on a balance of probability, from a taxable source. Indeed, the Appellant does not deny that she had unreported income. Her issue with the assessment approach is that it is filled with erroneous assumptions as to her lifestyle expenditures and sources of funds. She testified emotionally that since coming to this country she has worked very hard at several jobs to get ahead. Both her mother and brother have passed away so there is little evidence that she could produce as to their contribution to her apparent financial well being [*sic*]. One has the impression from her evidence, which in general terms impressed me as credible, that the net worth increases in wealth in this case may well have been

> attributable to unreported income from long extra hours of employment, from the pooling of family resources which may have included unreported income of other family members and from frugal living and careful management of her family's affairs. Nonetheless, the burden imposed on the Appellant is not relieved by such general impressions. It is not sufficient that the Appellant has satisfied the Court that the assessment is likely wrong, she has to give evidence that undermines specific assumptions and calculations.

[redacted]In the instant appeals only the appellant testified in support of his position. Clodie Robitaille, the auditor from the Canada Revenue Agency (the "Agency") in this case, and Roberto Capone, an officer of the Sûreté du Québec, testified in support of the Respondent's position.

[redacted]In assessing the evidence provided by the Appellant, the Court must comment on the failure to call certain persons as witnesses and to provide documentary evidence that could have confirmed the Appellant's statements. In *Huneault v. The Queen*, [1998] T.C.J. No. 103 (QL), 98 DTC 1488, my colleague Judge Lamarre (as she then was) referred, at paragraph 25 (QL), to remarks made by Sopinka and Lederman in *The Law of Evidence in Civil Cases*, which were cited by Judge Sarchuk of this Court in *Enns v. M.N.R.*, 87 DTC 208, at page 210:

> In *The Law of Evidence in Civil Cases*, by Sopinka and Lederman, the authors comment on the effect of failure to call a witness and I quote:
>
> > In *Blatch v. Archer*, (1774), 1 Cowp. 63, at p. 65, Lord Mansfield stated:
> >
> > > "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted."
>
> The application of this maxim has led to a well-recognized rule that the failure of a party or a witness to give evidence, which it was in the power of the party or witness to give and by which the facts might have been elucidated, justifies the court in drawing the inference that the evidence of the party or witness would have been unfavourable to the party to whom the failure was attributed.
>
> In the case of a plaintiff who has the evidentiary burden of establishing an issue, the effect of such an inference may be that the evidence led will be insufficient to discharge the burden. (*Lévesque et al. v. Comeau et al.*, [1970] S.C.R. 1010, (1971), 16 D.L.R. (3d) 425.)

In the instant case, before analyzing the relevant facts in detail, it is useful to make certain general comments on the credibility of the Appellant, who, I would point out, was the only person to testify in support of his appeals. I emphasize that the Appellant actually filed in support of his position numerous documents that I would characterize for the most part as irrelevant. In my view, it would be hazardous to give the Appellant's testimony any credence without any corroborating evidence in the form of documentation or testimony by credible witnesses.

The Appellant's answers were generally vague, imprecise and ambiguous. All too often, in cross-examination, he was unable to provide any valid explanation of his operations especially regarding:

(i) The period during which his companies operated the different Moneygram counters;

(ii) The reasons why the Moneygram counters were closed in December 2006;

(iii) The business activities that took place on the premises located at 1468 Shevchenko Blvd.

Not only were his answers generally vague and imprecise, they were often contradicted by documentary evidence or by the testimony of credible witnesses. I was particularly struck by the following examples of contradicted answers:

(i) The Appellant testified ad nauseam that he had nothing to do with SSE. Indeed, he testified that from February 2007 to July 2008 he was not a shareholder, officer or director (or a de facto director of SSE) and that Shanniel Powell did not work for him with regard to the Moneygram counter operated on the premises of SSE. The Appellant's testimony in this regard was clearly contradicted by the credible testimony of detective sergeant Capone, who was in charge of the search on the premises located at 1468 Shevchenko Blvd. in LaSalle (see pages 21 to 23 of his testimony). It is worth mentioning also that the evidence revealed that the Appellant declared to Ms. Robitaille during the assessment process that he did not know much about the ownership and operation of SSE except that a person whose name he did not know came to work on SSE's premises two or three times a week.

(ii) The Appellant explained in the following manner the discrepancy of more than $200,000 between the income earned by him and his wife during the relevant period and the amounts deposited in their personal bank accounts in the same period (pages 25 to 27 of his testimony):

JUSTICE BÉDARD: Do I understand you well that the discrepancy of more than $200,000 comes from money loan or money that you've earned before the period?

MR. OKOROZE: I had cars and ---

JUSTICE BÉDARD: Yeah, yeah, but when did you earn that money from buying and selling cars? When?

MR. OKOROZE: From before the period. Cars that were already in Nigeria waiting and still that were already done. So people owe me money ---

JUSTICE BÉDARD: Where was that money?

MR. OKOROZE: People owe me money in ---

JUSTICE BÉDARD: No, no, yeah, yeah, but what -- so the money was earned before the period?

MR. OKOROZE: Yes.

JUSTICE BÉDARD: Before 2003?

MR. OKOROZE: Before 2003 and ---

JUSTICE BÉDARD: And where was that money?

MR. OKOROZE: The money was outside in Nigeria.

JUSTICE BÉDARD: Okay. Can you show me wire transfer of that money?

MR. OKOROZE: It didn't -- the money didn't come in one time. I ---

JUSTICE BÉDARD: Do you have written evidence -- for how much money did you earn before the period?

MR. OKOROZE: I don't have ---

JUSTICE BÉDARD: The cash that you ---

MR. OKOROZE: I said the value of the car there is about 130,000. So the cars that were in Nigeria that period, before then, you know, it was about ---

JUSTICE BÉDARD: Did you ever declare to the auditor that you had earned money that you have cash available, money earned before the period?

MR. OKOROZE: Yes, she knew.

JUSTICE BÉDARD: She knew, okay.

MR. OKOROZE: I told her because the only -- that's how I bought my ---

JUSTICE BÉDARD: So you told her, okay. So essentially that money, the discrepancy for more than $200,000 comes from money earned before the period?

MR. OKOROZE: Not all because, like I said, I had line of credit ---

JUSTICE BÉDARD: Oh, it comes from some loan?

MR. OKOROZE: I had -- yeah. I have some line of credit.

JUSTICE BÉDARD: Okay. Okay.

MR. OKOROZE: I was also taking ---

JUSTICE BÉDARD: Okay.

MR. OKOROZE: --- and depositing from the bank.

JUSTICE BÉDARD: By the way, that -- those money loans were -- the auditor knows everything about your money loan and she takes notes of that.

MR. OKOROZE: Okay, so ---

JUSTICE BÉDARD: By the way. Okay.

MR. OKOROZE: --- this company is ---

JUSTICE BÉDARD: How much money did you earn and was still available before the period?

> MR. OKOROZE: In the cars and used clothes, I can't give you the exact amount, I don't know.
>
> JUSTICE BÉDARD: Yeah, well it could be a million.
>
> MR. OKOROZE: No.
>
> JUSTICE BÉDARD: Two hundred thousand (200,000)?
>
> MR. OKOROZE: Before that exact -- before that period ---
>
> JUSTICE BÉDARD: Remember that some of it comes from loan. So how much money?
>
> MR. OKOROZE: If I look at the things, according to evidence there on the cars that I have there, what I see on receipt in my inventory that was carried over was about a hundred and something thousand, just the cars alone.
>
> JUSTICE BÉDARD: A hundred thousand dollars ($100,000)?
>
> MR. OKOROZE: I think about 139,000, something, in the cars, the inventory that I have there that were both before I had ---
>
> JUSTICE BÉDARD: Okay. That's enough for me. Thank you, sir.

Again, the Appellant's testimony on the amounts deposited in the personal bank accounts that came from selling cars in Nigeria (i.e., amounts paid by the alleged Nigerian buyers of those cars before 2003) was contradicted by documentary evidence (see Exhibit A-1) which shows that he never declared that he had foreign assets at the beginning of the relevant period. It is worth mentioning that the credible testimony of Ms. Robitaille revealed that the Appellant never gave her that kind of explanation during the assessment process.

(iii) The Appellant stated at the beginning of his testimony that he did not have any documentary evidence with regard to the Moneygram counters operated by his corporations during the relevant period since their premises were flooded in 2008. Later on, the Appellant testified that he was required by Moneygram at the end of 2006 (when he ceased doing business with Moneygram) to send all that documentation to them and that he complied with that requirement. Which of his two versions am I to choose?

(iv) The fact that neither 9155 nor Belles Plumes have ever filed income tax returns and the fact that Divine failed to produce on time its income tax returns for the years 2007 and 2008 add to my doubts about the Appellant's credibility.

[redacted]For those reasons, I attach little probative value to any of the Appellant's testimony that was not corroborated by sound documentary evidence or by the testimony of credible witnesses.

Benefits conferred by Divine

[redacted]I note that the Minister alleged (see paragraphs 30(q) to 30(hh) of the Reply to the Notice of Appeal) that amounts totalling respectively $405,310 and $287,412 were received by the Appellant (Divine issued cheques to the Appellant which were cashed by him) and not remitted by the Appellant to the intended recipients. In other words, the Minister alleged that the said amounts were not remitted to Moneygram's customers but were kept by the Appellant and that, consequently, the said amounts are shareholder benefits conferred by Divine on the Appellant. The Appellant, on the other hand, contends essentially that the said amounts were not kept by him but were remitted to Moneygram's customers. He also argues that his corporations and SSE were not even accused of fraud. The evidence on this important disputed point consisted essentially of his own testimony. The evidence also showed that there is no record to prove that the said amounts were given to Moneygram's customers. The evidence revealed as well that there are no receipts signed by Moneygram's customers acknowledging that cash was received by them as clients of Moneygram. The Appellant argued that the documentary evidence that would have proved that the cash was received by Moneygram's customers was sent back to Moneygram (at its request) when the Appellant's corporations put an end to their business relations with Moneygram.

[redacted]Having regard to the little probative value that I attach to the Appellant's testimony where it is not supported by sound documentary evidence or by the testimony of independent and credible witnesses, I am of the opinion that the amounts in question are shareholder benefits conferred by Divine on the Appellant. It would have been interesting to hear the testimony of an officer of Moneygram regarding the complaints filed by Moneygram's clients, regarding the fact that Divine sent back to Moneygram (at Moneygram's request) all the documentary evidence related to their business relations, and finally regarding the fact that it was Divine and not Moneygram that put an end to their business relations. The Appellant could also have submitted the documentary evidence that was allegedly

in Moneygram's hands. This also he did not do. I infer from this that the evidence (the testimony of an officer of Moneygram and the documentary evidence in the hands of Moneygram) would not have been favourable to him. I am also of the opinion that, when a business (such as Divine) relies on cash transactions, the onus to maintain adequate books and records which are fairly transparent and self-explanatory to a third party who is reviewing those records is that much greater. In a self-assessing system, taxpayers have the responsibility to clearly track and report their business activities, particularly where those activities involve cash transactions. In the evidence submitted, there was nothing that would indicate that the business in question here would be a particularly difficult one to properly track.

Ownership of SSE

I note that the Appellant explained that he was not a shareholder, officer, director or employee of SSE from February 2007 to July 2008, and that he argued that consequently no shareholder benefits could have been conferred on him by SSE during that period. The Appellant's evidence on this disputed point was limited to his own testimony. I would point out that the Appellant's testimony on this point (see paragraph 17(i) of these reasons) was contradicted by the credible testimony of Mr. Capone and Ms. Robitaille. Considering the little probative value that I attach to the Appellant's testimony where it is not supported by sound documentary evidence or by the testimony of independent and credible witnesses, I am of the opinion that Ms. Shanniel Powell was SSE's apparent shareholder and that SSE's real shareholder during that period was the Appellant. It would have been interesting to hear the testimony of Ms. Powell on this point. The Appellant could have called his sister-in-law as a witness. This he did not do. I infer from this that her testimony would not have been favourable to him. Consequently, I am of the opinion that the Minister was correct in adding amounts to the Appellant's income as shareholder benefits conferred on him by SSE.

Foreign assets

I note that the Appellant argued that Ms. Robitaille did not take into account the fact that, at the beginning of the relevant period, he owned foreign assets ("cash assets") totalling around $100,000. I note as well that the Appellant's evidence on this disputed point consisted essentially of his own testimony (see paragraph 17(ii) of these reasons). The Appellant testified that the said assets were generated by the sale of used cars in foreign countries. His testimony was however silent as to the cost of those cars, their sale price, the identity of the buyers, and the date they were

sold. I note that the Appellant filed no sound documentary evidence relating to its business activities involving cars. I note also that the Appellant's testimony on this point was contradicted by documentary evidence (see paragraph 17(ii) of these reasons). I would also point out that the Appellant never mentioned this matter to Ms. Robitaille during the assessment process. Having regard to the little probative value that I attach to the Appellant's testimony when it is not supported by sound documentary evidence or by the testimony of independent and credible witnesses, I am of the opinion that the Appellant did not hold at the beginning of the relevant period cash amounting to $100,000 as alleged.

Car expenses

The Appellant contends that the motor vehicles rented by Divine during the relevant period were not used for the purpose of earning income. On that point, the evidence revealed the following:

(i) During the relevant period, Divine paid all the rental, maintenance and insurance expenses for the motor vehicles (a Toyota 4Runner and an Infiniti Q56).

(ii) During the relevant period, the Appellant and his wife did not own a motor vehicle and only started leasing one in July 2008.

The Appellant also contends that one of the motor vehicles (the Toyota 4Runner) was subleased to a third party. To corroborate his testimony on this point, the Appellant filed Exhibits A-12, A-13, A-14 and A-15, which are deposit slips and bank statements which show that amounts equal to the rental payments made by Divine were deposited in Divine's bank account. I note that the Appellant's testimony on this point was silent as to the duration of the alleged sublease and also as to the identity of the sublessee.

Were the motor vehicles rented by Divine during the relevant period used for the purpose of earning income? The Appellant's evidence on this point consisted essentially of his own testimony, since I consider that Exhibit A-24 filed by him in support of his testimony is not sound documentary evidence. This documentation proves only that on certain occasions goods were shipped by Divine or to Divine. It does not even demonstrate that rented cars were used for those shipments. I also note that the evidence revealed that Divine did not maintain records to keep track of the use of the rental cars.

[redacted]Again, having regard to the little probative value that I attach to the Appellant's testimony where it is not supported by sound documentary evidence or by the testimony of independent and credible witnesses, and considering the nature of Divine's business, and finally considering that during the relevant period the Appellant and his wife did not own a motor vehicle and only started leasing one in July 2008, I am of the opinion that the Appellant has not discharged the burden of proving that the rental cars were used by Divine in the relevant period for the purpose of earning income.

[redacted]Was the Toyota 4Runner subleased to a third party? Again, having regard to the little probative value that I attach to the Appellant's testimony where it is not supported by sound documentary evidence or by the testimony of independent and credible witnesses, I am of the opinion that the Appellant has not discharged the burden of proving that the Toyota 4Runner was subleased by Divine to a third party. I note that the Appellant's evidence on this point consisted essentially of his own evasive and imprecise testimony and documentary evidence that is not sound. I would also add that the Appellant could have called the alleged sublessee as a witness. This he did not do. I therefore infer that this evidence would not have been favorable to him.

Ms. Robitaille's conduct

[redacted]During the hearing, the Appellant complained ad nauseam that Ms. Robitaille conducted her investigation with malicious intent. For example, he testified that she used forged documents (namely Exhibits A-2, A-3, A-4 and A-5) and that she knew they were forged. He also testified that he was entrapped by the Sûreté du Québec. Consequently, he contends, the net worth assessment cannot stand because of these wrongdoings.

[redacted]Firstly, I am of the opinion that this Court is not the proper forum in which to have such a question disposed of. I would add that this Court's jurisdiction is to render a decision as to whether or not assessments issued are correct in whole or in part.

[redacted]Secondly, the Appellant's allegations of forgery, fraud, entrapment and wrongdoing are gratuitous, frivolous and not supported by sound evidence. It seems to me that these allegations stem from a misconception as to the definition of fraud, forgery and entrapment. Finally, I would add that the evidence presented by way of Ms. Robitaille's testimony demonstrates the very opposite of malicious intent or any type of wrongdoing.

Penalties

[redacted] I have come to the conclusion that the Appellant deliberately failed to report $1,305,349 in income. In my opinion, the Minister has discharged her burden of proof and was therefore entitled to impose penalties under subsection 163(2) of the *Income Tax Act*. I am also of the opinion that, under subsection 152(4), the Minister was entitled to make the reassessments for the years 2004 to 2007 inclusively, which were made, I would point out, after the normal reassessment periods.

[redacted] For the foregoing reasons, the appeals from the reassessments are dismissed with costs.

Signed at Montreal, Quebec, this 30th day of March 2015.

"Paul Bédard"

Bédard D.J.

CITATION:	2015 TCC 64
COURT FILE NO.:	2012-2889(IT)G
STYLE OF CAUSE:	OBARO OKOROZE v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montreal, Quebec
DATES OF HEARING:	January 12, 13 and 14, 2015
REASONS FOR JUDGMENT BY:	The Honourable Justice Paul Bédard, Deputy Judge
DATE OF JUDGMENT:	March 30, 2015
APPEARANCES:	
For the Appellant:	The Appellant himself
Counsel for the Respondent:	Alain Gareau
COUNSEL OF RECORD:	
For the Appellant:	
Name:	
Firm:	
For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada