Docket: 2014-1352(GST)I

BETWEEN:

9259-9893 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence on April 20, 2015, at Québec, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the appellant: Isabelle Drouin-Lessard

Counsel for the Respondent: Alex Boisvert

JUDGMENT

The appeal with respect to the assessments made under Part IX of the *Excise Tax Act* dated April 18, 2013, for the period from July 22, 2011, to June 30, 2012, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Kingston, Ontario, this 22nd day of July 2015.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 3rd day of September 2015

Daniela Guglietta, Translator

Citation: 2015 TCC 189
Date: 20150722
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REASONS FOR JUDGMENT

Masse D.J.

[1] This is an appeal from the Notices of Assessment dated April 18, 2013, for the period from July 22, 2011, to June 30, 2012 (hereinafter the relevant period), made against the appellant under the *Excise Tax Act*, R.S.C. 1985, c. E15, as amended (hereinafter the ETA).

Factual background

[2] The appellant is a corporation with its head office located at 810 Wilfrid-Hamel Boulevard, Suite 100, in Québec, province of Quebec. It is a registrant for the purposes of Part IX of the ETA. Daniel Bélanger is the appellant's sole director and shareholder. The appellant operated flea market and swingers club businesses during the relevant period.

[3] All supplies provided by the appellant in connection with its businesses are commercial activities and are taxable supplies for which the goods and services tax (the GST) is payable by the appellant's buyers, to be collected and remitted by the appellant to the Minister.

[4] Claude Désilets, tax auditor for the Revenue Agency, conducted an audit of the appellant's affairs between January and March 2013. During the audit, he realized that, although the appellant's bookkeeping was computerized, the appellant's accounting books and records were incomplete and deficient in that no taxable cash sale was accounted for in the books. Mr. Désilets therefore looked at

the bank deposits made by the appellant. He realized that the income for the audited year was low, and that all of the income came from debit cards and credit cards. There was no cash income. However, his review of the bank deposits revealed that the appellant had made cash deposits that were all recorded in the [TRANSLATION] "owing to Mr. Bélanger" account in the appellant's books. The appellant made a total of 10 cash bank deposits for the relevant period, namely:

August 2011	$6,220.00
September 2011	$3,250.00
October 2011	$4,200.00
November 2011	$5,852.00
January 2012	$4,000.00
February 2012	$3,270.00
March 2012	$3,800.00
April 2012	$1,220.00
May 2012	$4,118.00
June 2012	$2,163.00
Total	**$38,093.00**

[5] The sales recorded in the books in [TRANSLATION] "income from debit card and credit card" and the sales recorded in the books in [TRANSLATION] "income from cheques" total $7,913.81 for the relevant period—an amount well below the cash amount deposited. Mr. Bélanger always claimed that none of the appellant's clients paid cash and the cash deposits that were made came from the money he kept in a home safe to advance it to the appellant as investments. According to the auditor, this was unverifiable and there was no documentary evidence in support of this claim except for Mr. Bélanger's verbal statements. The auditor was of the view

that it is highly unlikely that none of the clients paid cash as contended by Mr. Bélanger. The appellant's claim is neither plausible nor reasonable.

[6] The auditor therefore considered that the cash deposits were unreported income including taxes. Mr. Désilets was of the view that the appellant was unable to justify by documentary evidence that the cash amounts deposited in his son bank account was not income on which taxes had to be collected and remitted to the Minister.

[7] On April 18, 2013, the Minister assessed the appellant for unreported GST on that income for the relevant period totalling $3,587.49 plus interest. These assessments led to adjustments to the calculation of the GST and the input tax credits reported by the appellant. On July 9, 2013, the appellant submitted to the Minister a Notice of Objection to the assessments at issue. On January 9, 2014, in response to the Notice of Objection, the Minister upheld the assessments—hence this appeal.

[8] The appellant only challenges the amount of $1,664.40, which is the GST added to the alleged unreported income.

[9] Daniel Bélanger testified. He is a business man. He is the appellant's sole director and shareholder. At first, the appellant operated a liquidation centre, but that business was unsuccessful. Thus, the appellant established a swingers club in 2010. He admitted that he made cash deposits totalling $38,093 into the appellant's bank account. He explained to us that since 1979 he had been putting money aside over the years. In the past, he had held multiple jobs as a server in bars and he told us that he was paid in cash. He put all the money he earned in a safe that he kept in his home. He did not spend the money he put aside, except to pay for his needs, and he never deposited it in the bank. He was raised not to trust banks. He saved all the time and did not indulge in the purchase of new items and trips. He never overspent.

[10] Mr. Bélanger told us that when his father passed away, he inherited money that his father also kept in a safe. Mr. Bélanger put that money in his home safe. A few years later, his mother passed away and he received another cash amount that he put in his safe. Furthermore, the daughter of Mr. Bélanger's spouse passed away and his spouse received over $100,000 in life insurance. That money was also placed in the home safe. Mr. Bélanger's spouse also sold a house that was bequeathed to her by her father. She received $75,000 from the sale of the home. That money was also put in the home safe. That safe was where the money he had

deposited into the appellant's bank account came from. Mr. Bélanger took the money from the safe and deposited it into the appellant's bank account. He did so because the appellant often did not have enough money to pay for its expenses. Mr. Bélanger and his spouse do not have investments.

[11] On cross-examination, he agreed that his total income in 2011 was $2,036.99 and in 2012, his total income was only $2,511.01; they were very low incomes. He admitted that from time to time the appellant rented tables at flea markets. This happened three or four times, but it was not successful. He did not sell anything at the flea markets and he told us that the appellant was not paid in cash at flea markets. The swingers club business only operated on a credit card or debit card basis. At first, it was cash-based, but this changed during the relevant period so that all the appellant's clients paid by debit card or credit card and not cash.

[12] Sylvie Fortin is Mr. Bélanger's spouse. She testified that she inherited from her parents, an immovable, which was worth approximately $75,000. She sold the immovable in 2001. She took the money and put it in the home safe. Ms. Fortin also told us that her daughter sadly passed away in 2006. Ms. Fortin was the beneficiary of a life insurance policy worth approximately $100,000. She received that money and put it in the safe without investing it. Her mother always told her not to put her money in the bank and in investments; she was better off putting her money in a safe or in a mattress. However, she admitted having a personal bank account that she uses to pay certain bills such as insurance. She testified that from time to time during the years under appeal, she took money from the safe to deposit it in the appellant's bank account when the appellant needed it, for instance to pay the rent. She was unable to tell us how much money is left in the safe as of today.

[13] On cross-examination, she told us that she is a business woman and that she had already operated a business. She knew the obligations associated with operating a business. In 2011, she reported total income of $11,919.54. In 2012, she reported total income of $13,376.00. She admitted that she has no documentary evidence that shows she cashed the $75,000 and $100,000 cheques that she then withdrew and put in the home safe. She admitted that she was the one who prepared the deposit slips and who was responsible for making the bank deposits for the appellant. Exhibit I-8 is a deposit slip dated August 29, 2011, in the amount of $1,550.00 cash. She is the one who prepared that slip. Initially, she described the deposit as [TRANSLATION] "flea market income" and then whited it out with liquid paper and wrote [TRANSLATION] "Dany investment." She explained to us that it was

an error she had made in preparing the deposit slip. However, Mr. Bélanger told us that the appellant did not sell anything at the flea markets and that the appellant was not paid in cash at flea markets. Therefore, it is difficult to see how Ms. Fortin could have made a mistake with respect to where the cash to be deposited came from if the flea markets at the time did not generate any cash income for the appellant.

[14] The sole issue in this case is the source of the $38,093 deposited in the appellant's bank account— is it the appellant's income, as the Minister alleges, or is it an investment by Mr. Bélanger, as argued by the appellant. In other words, in the case at bar the issue is whether the appellant rebutted the presumption of validity of the assessment at issue.

Appellant's position

[15] The appellant submits that the amounts of money in question came from Mr. Bélanger and Ms. Fortin's safe and not from the appellant's income. They explained how they received that money. The money is [TRANSLATION] "owing to Dany" and therefore is not taxable income.

[16] The appellant therefore asks that the appeal be allowed and that the matter be referred back to the Minister for reconsideration and reassessment.

Respondent's position

[17] The respondent submits that the money that was deposited in the appellant's bank account is the appellant's unreported income. Furthermore, under section 299 of the ETA, the assessment issued to the appellant is presumed to be valid.

[18] The respondent therefore asks that the appeal be dismissed.

Analysis

[19] It goes without saying that an assessment is deemed to be valid under section 299 of the ETA. When a taxpayer challenges an assessment before the Tax Court of Canada, the burden is on the taxpayer to show that the assessment is without merit. *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336 (S.C.C.), teaches that the Minister, in making assessments, proceeds on assumptions and that the initial onus is on the taxpayer to demolish the Minister's assumptions. The initial onus of demolishing the Minister's exact assumptions is met where the taxpayer makes at

least a *prima facie* case. Finally, where the taxpayer has met the initial burden, the onus shifts to the Minister to rebut the *prima facie* case made out by the taxpayer and to prove the assumptions. A *prima facie* case is one with evidence that establishes a fact until the contrary is proved. A *prima facie* case is one supported by evidence which raises such a degree of probability in its favour that it must be accepted if believed by the Court unless it is rebutted or the contrary is proved. The Federal Court of Appeal stated that the burden of proof put on the taxpayer is not to be lightly, capriciously or casually shifted. In *Orly Automobiles Inc. v. Canada*, 2005 FCA 425, [2005] G.S.T.C. 200, the Federal Court of Appeal held that there is a very simple and pragmatic reason as to why the burden is on the taxpayer. It is the taxpayer's business. He knows and possesses information that the Minister does not. He has information within his reach and under his control. He knows how and why it is run in a particular fashion rather than in some other ways. The taxation system is a self-reporting system. Any shifting of the taxpayer's burden to provide and to report information that he knows or controls can compromise the integrity, enforceability and, therefore, the credibility of the system.

[20] In *2868-2656 Québec Inc. v. The Queen*, 2003 TCC 277 (CanLII), Judge Tardif had to rule on the responsibility of an agent for the collection of taxes. He stated as follows at paragraphs 41 *et seq.*:

> 41 Acting as an agent for the collection of taxes calls for impeccable transparency that is untainted by any doubt and, most importantly, for the availability of all supporting documents so that impeccable, flawless management may be proven at all times.
>
> 42 While any error or omission can lead to troublesome disadvantages and consequences, the persons whose behaviour caused the omissions are solely responsible for the situation.
>
> 43 In this case, the appellant corporation deliberately destroyed the vouchers that were indispensable to elementary accounting. The vouchers and documents available amply justified a strong presumption that the accounting records did not reflect a large portion of the income.
>
> 44 The appellant corporation benefited from many substantial deposits; the appeal specifically involves the source of those deposits.
>
> 45 The balance of the evidence has confirmed the respondent's arguments that those deposits came from the appellant corporation's operations, not from the sole shareholder's savings. The many vague statements and contradictions completely undermined the quality of Lucie Pelletier's testimony and also discredited the explanations of the appellant corporation's operations.

[Emphasis added.]

[21] In *Ruest v. The Queen*, 1999 CanLII 346 (TCC), the assessments were made using the "net worth" method as the appellant had no bookkeeping or accounting system for his business. As the appellant's income was not sufficient to justify his expenses and assets, Revenue Canada concluded that he had received and benefited from income greater than that which he had reported. As in this case, the appellant contended that he used capital of more than $30,000 received from two different sources: (1) $20,000 was the sale of a portion of his hockey card collection; and (2) a gift of $10,000 from his father. The appellant made very little use of his bank accounts in his economic activities, but dealt more often than not in cash.

[22] Judge Tardif, in dismissing the appeal, ruled as follows with respect to the appellant's burden of proof:

> [13] In tax law, the burden of proof is on the appellant, who must show on the balance of evidence that his claims are valid. To do so, he must demonstrate by means of coherent and plausible evidence that those claims rest on a credible and verifiable foundation.
>
> [14] An assessment made using the net worth method supposes an analysis and consideration of a number of components relating to a period of one or more years. The result of the exercise is the revelation of certain discrepancies which generally provide the basis for the assessment. The easy, or indeed simplistic, reply or response to explain the discrepancy or discrepancies is to say that there was a sudden, new cash inflow which explains and justifies everything.
>
> [15] This is of course possible and plausible, but nevertheless requires a degree of reliability in which there is little room for doubt. In other words, this kind of verbal evidence, supported by writings of dubious quality, definitely requires corroboration from a source beyond the control of the person benefiting from the cash contribution.
>
> [16] Furthermore, I think it equally important to be able to show how and how often the amounts received were used or spent. In other words, a taxpayer who receives some substantial amount of money will have to demonstrate the manner in which the funds were used. The explanation that the funds were deposited and kept in a safe-deposit box or held in the form of cash in the home for use if needed is not very convincing.
>
> [17] Saying that capital was obtained from a very particular or exceptional source in order to explain and justify all discrepancies or operations that do not balance may raise doubts concerning plausibility.

> [18] In the instant case, the appellant certainly explained and justified the mathematical discrepancies by saying that he had received a cash inflow of $30,000 (from the sale of hockey cards and a gift from his father). Is this evidence, consisting essentially of testimony by the appellant and Pierre Paquette, decisive? Should the Court be satisfied with this explanation and find in the appellant's favour?
>
> [19] I would say at the outset that I very much doubt the likelihood of this cash inflow. It would have been helpful to have corroborated this explanation in order to substantiate and strengthen it, given the fact that it was a very particular explanation, but also a surprising one as to the accuracy of the total amount and the strategic moment when the appellant was able to benefit from it.
>
> . . .
>
> [27] Since the assessments resulted from the observed discrepancy between income and expenses relative to capital or assets, the burden was solely on the appellant to explain that discrepancy. To convince the Court, he had to show on the balance of evidence that his claims were plausible, reasonable, correct and coherent. . . .
>
> [Emphasis added.]

[23] In my view, the appellant did not show on the balance of evidence that his claims were plausible, reasonable, correct and coherent. A number of aspects of the evidence lead me to that conclusion.

a. It is highly unlikely that none of the appellant's clients paid the appellant cash as Mr. Bélanger contends. This claim is not consistent with the reality of a modern small business.

b. Except for the testimony of Mr. Bélanger and Ms. Fortin, there is no evidence of a safe containing a substantial amount of cash. A photograph of said safe showing an amount of money would have been easy to obtain to submit to the Court.

c. Mr. Bélanger did not indicate the amount of money he inherited from his parents, or the date on which he received his inheritance, or the amounts he took from the safe over the years. In other words, there is no accounting for the amounts put in the safe and the amounts taken from the safe over the years. We do not know how much money they needed to

support themselves. We do not know how much money is left in the safe.

d. The only evidence to support the appellant's claims that the cash deposits came from the safe is the testimony of Mr. Bélanger and Ms. Fortin. Ms. Fortin certainly received two cheques when she sold the house she inherited and when she received life insurance upon her daughter's death. She definitely cashed those cheques at the bank. However, she did not provide any documentary evidence that she withdrew the money from her bank account to put it in the safe. Mr. Bélanger did not provide any documentary evidence to support those claims.

e. Mr. Bélanger and Ms. Fortin are business people. They are very knowledgeable about the obligations associated with operating a business. They know that today's businesses cannot operate without using a bank's services. Bank accounts are indispensable for the optimal management of a business. Ms. Fortin had a personal bank account that she used to pay certain bills; thus, she knows the advantage of having access to a bank account. It is inconceivable that business people would leave substantial amounts of cash in a home safe instead of safely depositing the cash in a bank account. The practice of keeping a substantial amount of cash in a home safe instead of depositing it in a bank account leads us to believe that Mr. Bélanger and Ms. Fortin wanted to conceal their assets.

f. The deposit slip (Exhibit I-8) questions the appellant's claim that the appellant did not sell anything at the flea markets and that the appellant was not paid in cash at flea markets. As noted above, it is difficult to see how Ms. Fortin could have made a mistake with respect to where the cash came from if the flea markets at the time did not generate any cash income for the appellant.

[24] The only evidence that the cash that was deposited in the appellant's bank account came from Mr. Bélanger and Ms. Fortin's safe is their testimony. There is insufficient documentary evidence to support their claim. In the case at bar, if I may borrow the words of Judge Tardif in *2868-2656 Québec Inc.*, *supra*, there is a

lack of impeccable transparency that is required of a person who is an agent for the collection of taxes. The appellant was unable to provide all the supporting documentation to demonstrate irreproachable and flawless management. The lack of supporting documentation, and the deposit slip that was altered, justifies a presumption that the appellant wanted to conceal a portion of its income.

Conclusion

[25] Having considered all the evidence, I am not persuaded that the appellant has met its burden of showing that the Minister's assumptions, on which the Minister proceeded in making the assessment, are without merit in fact or in law.

[26] For these reasons, the appeal is dismissed.

Signed at Kingston, Ontario, this 22nd day of July 2015.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 3rd day of September 2015

Daniela Guglietta, Translator

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APPEARANCES:

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Counsel for the respondent:	Alex Boisvert

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