Docket: 2012-3534(IT)G

BETWEEN:

PATRICK CHARTRAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 14, 2015, at Toronto, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Tony Cheung

JUDGMENT

For the attached reasons for judgment, the appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed with costs.

Signed at Toronto, Ontario, this 1st day of December 2015.

"Rommel G. Masse"

Masse D.J.

Citation: 2015 TCC 298
Date: 20151201
Docket: 2012-3534(IT)G

BETWEEN:

PATRICK CHARTRAND,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

Overview

[1] Fiscal Arbitrators are unscrupulous tax preparers who lured the Appellant into using their services to prepare his tax return with the promise of receiving huge tax refunds. The tax refunds were the result of fictitious business losses claimed by the Appellant when he never owned or operated any kind of business. The Canada Revenue Agency (the "CRA") denied the losses and penalized the Appellant pursuant to subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the "Act"). This case pertains only to the penalty.

[2] The issue is simply whether the Appellant either knowingly, or in circumstances amounting to gross negligence, made or acquiesced in the making of false statements in his return so as to attract the harsh penalties provided for in subsection 163(2) of the Act.

Factual Context

[3] Patrick Chartrand has a grade 11 education and he is a skilled tradesman, having worked as a carpenter for the past 28 years. He is employed by Crossby Dewar Inc. and for the last six years he has been working at the Bruce Nuclear Generating Station where he was responsible for scaffolding. He was not involved in the management of other people.

[4] In prior years, he had H&R Block prepare his tax returns since, as he says, he did not understand tax returns. He usually paid about $200 for this service. In prior years he reported employment income only and usually got a refund of a couple of thousand dollars.

[5] He was first introduced to Fiscal Arbitrators by a friend at work who was involved with them. The colleague made arrangements for the Appellant to meet representatives of Fiscal Arbitrators at an informational seminar. The Appellant attended only the one seminar that took place in December 2009 or January 2010. He does not remember the names of any of the speakers and he does not remember if he signed a confidentiality agreement, although it is possible. Fiscal Arbitrators showed him a way to get more money back from the government. He testified that at the seminar he was told that he could consider his home as a business since he had to travel from home to go to work in order to make income to pay for the home, groceries, clothing, insurance, gas, maintenance and so on. The Appellant also stated that he may have possibly been told by representatives of Fiscal Arbitrators that there was a way that an individual could be separated from his or her social insurance number and thus create two separate entities for tax purposes. Frankly, the Appellant does not provide us with much detail concerning the proposed scheme and how it worked. All the Appellant knew was that his co-worker's return looked good to him and, if Fiscal Arbitrators could go further than H&R Block, then he was interested. There was an initial fee of $500 to prepare the return and Fiscal Arbitrators would get a total fee of 20% of any tax refund received. Later on, there were additional legal fees of $800 once the Appellant started to get in trouble with the CRA. He stated that the fact that he had to pay Fiscal Arbitrators much more than he had paid H&R Block in the past did not ring any alarm bells.

[6] The Appellant did not ask Fiscal Arbitrators for any references concerning their services, and he did not get a second opinion from an accountant or a lawyer concerning this tax savings scheme. The Appellant did not take any steps at all to find out if what Fiscal Arbitrators were suggesting was legal. He saw his co-worker get a huge tax refund and he wanted the same.

[7] The Appellant was shown his 2009 tax return (Exhibit R-1, Tab 2). He acknowledges having put his signature on the last page, but he was not the one who wrote "per" on the signature line in front of his name and he imagines that Fiscal Arbitrators did — he did not think anything of it and he did not ask any representative of Fiscal Arbitrators why "per" was written on the signature line. He stated that he did not review his return in its entirety and never read any of the

supporting documents. He says that he never goes over anything. He agreed that no one signed or completed the box reserved for the tax preparer who prepared the return but he states that he did not notice that this box was left empty when he signed the return. In filing his tax return for the 2009 taxation year, the Appellant reported his employment income from Crossby Dewar in the amount of $113,126.52, as reported in his T4 slip as well as other employment income of $1,027.56 reported in a T4A slip. He had no income from any other sources whatsoever.

[8] A cursory review of his 2009 tax return shows some glaringly false information. In his tax return, the Appellant claimed gross business or professional income (“receipts as agent”) in the amount of $134,701.81 and he also claimed business expenses (“amt to principal fr agent”) in the amount of $546,816.51 resulting in a net business loss of $412,114.70 (statement of business or professional activities, Exhibit R-1, Tab 1). This is a significant business loss compared to his reported employment income. The Appellant used $109,361.70 of the claimed business losses against his 2009 taxation year which would have resulted in a refund of $35,899, all of the taxes withheld at source for the 2009 taxation year. The Appellant also signed a request for loss carryback requesting that the unused balance of his claimed business losses be carried back and applied to his 2006, 2007 and 2008 taxation years as non-capital losses. This carryback would result in the refund of all or practically all of the taxes paid for those years. He agrees that he was expecting a refund of close to $36,000 and this still did not raise any red flags in his mind. He acknowledges that this was a much higher refund than he got through H&R Block and he knew that his friend had gotten a large refund. He acknowledges that it would not be normal for him not to pay any taxes at all over a four-year period, but he felt that if he could get such a large return, then he was up for it. He also acknowledges that if every citizen in Canada tried to do this, then the country would be bankrupt — something he says he now realizes.

[9] The Appellant does not dispute that he signed both his tax return for 2009 and also his request for loss carryback for 2006, 2007, 2008 and 2009. He signed “per Patrick Chartrand” even though he is not the one who wrote “per” on those documents. He agrees that, by signing, he certified that the information provided on the return and in any documents attached was correct, complete and fully disclosed all his income. He claims that he had no idea how Fiscal Arbitrators calculated the business losses or the loss carryback — he was simply given the forms by Fiscal Arbitrators and reviewed them, but did not understand them. Still, he signed the forms and tax return and submitted them. The Appellant

acknowledges that his only source of income during those years was income from employment. He acknowledges that at no time during the period under consideration did he own or operate a business of any kind. He acknowledges that he had no idea what it meant to be in business as an "agent" nor did he understand what "receipts as agent" meant or what the business expenses reported as "amt to principal fr agent" meant. He had no idea what any of this meant and he never sought any clarification from Fiscal Arbitrators. He agrees that he looked over the return, but did not ask anyone about it.

[10] On July 15, 2010, the CRA sent a letter (Exhibit R-1, Tab 4) to the Appellant seeking further information from him in relation to his claimed business losses. The CRA asked for the completion of a business questionnaire explaining how his claim for "amounts paid to principal for agent" qualifies as business expenses. The CRA also requested that the Appellant furnish source documents in order to establish the nature of the business income and details of expenses paid by the business attributed to the sources of income. The CRA also requested information regarding the bank account registered in the business name as well as where the business applied for a business licence and business number. A response from the Appellant was requested within 30 days. The Appellant had been told that, if he had any problems, Fiscal Arbitrators had their own legal department. Consequently, the Appellant sent this letter to Fiscal Arbitrators who prepared a response. This response is set out at Tab 5 of Exhibit R-1. This response only had the Appellant's name on it and nowhere does it indicate that it was prepared by Fiscal Arbitrators on behalf of the Appellant. The Appellant admits that he went over this letter, but he did not understand it. On reading this letter, it is obvious that this so-called response is complete and utter nonsense and is in no way responsive to the valid concerns raised by the CRA. Still, the Appellant did not think that he had to contact the CRA directly or that he should seek advice from anybody else concerning how he should respond — he just put his faith in Fiscal Arbitrators.

[11] The CRA never did receive the information requested. The Appellant simply did not, and indeed could not, provide any details related to his business income and losses since they did not exist. The CRA sent a follow-up letter dated October 6, 2010 to the Appellant advising of its intent to disallow the net business losses claimed and also advising of its intent to impose penalties pursuant to subsection 163(2) of the Act. Again, rather than communicate with the CRA, the Appellant gave this letter to Fiscal Arbitrators. Fiscal Arbitrators prepared another nonsensical response (Exhibit R-1, Tab 8). Again, this letter was completely non-responsive to the concerns raised by the CRA. Consequently, the CRA denied the Appellant's business losses for 2006, 2007, 2008 and 2009 and imposed a gross

negligence penalty pursuant to subsection 163(2) of the Act totalling $54,496.62 in addition to provincial penalties plus interest. The Appellant was assessed accordingly by way of notice of assessment dated October 29, 2010 (Exhibit R-1, Tab 11). The Appellant objected to the assessment by notice of objection dated November 26, 2010 (Exhibit R-1, Tab 12). This notice of objection, which was signed "per Patrick J. Chartrand authorized representative", was prepared by Fiscal Arbitrators. Fiscal Arbitrators are not identified as having prepared this notice of objection or as representing the Appellant. Again, the facts and reasons for the objection set out in the notice of objection make no sense at all. Not surprisingly, the Minister of National Revenue (the "Minister") confirmed the assessment on July 23, 2012, hence the appeal to this Court.

[12] The Appellant contends that he did not understand his tax return. He simply looked over the materials and did whatever Fiscal Arbitrators told him to do. He simply followed instructions. He did not question why his tax preparer did not indicate on his return that they had prepared the return, nor did he understand or question why he claimed business losses when he in fact had no business. He stated that he never prepared a tax return in his life and that is why he goes to a tax preparer. He did not understand what Fiscal Arbitrators were saying and he simply signed documents without asking for any explanation of what was going on. He figured that if his co-worker could get a refund then maybe he could too. If he is guilty of anything, he is simply guilty of ignorance for not reading his return before signing it and sending it to the CRA. The Appellant has already suffered greatly and he requests that the subsection 163(2) penalties be vacated.

[13] The Respondent is of the view that the Appellant made a false statement in his return either knowingly or in circumstances amounting to gross negligence. At the very least the Appellant was wilfully blind regarding the fraudulent scheme engaged in by his tax preparer. The Appellant never had a business of any kind and therefore could not claim business expenses of more than half a million dollars. The Appellant's suspicions were aroused to the point where further inquiries were needed, but he simply did not care and chose not to inform himself. He turned a blind eye to obvious warning signs. All he wanted was to obtain huge refunds which amounted to practically all of the taxes he had paid over the last four years and to that end he put blind trust and faith in Fiscal Arbitrators and did whatever they told him to do without question. The Respondent therefore contends that she has discharged the burden of proving that the Appellant was grossly negligent and therefore that subsection 163(2) penalties are appropriate in the circumstances, and urges the Court to dismiss the appeal with costs.

Legislative Dispositions

[14] Subsection 163(2) of the Act 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 . . .

[15] According to subsection 163(3), the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

Analysis

[16] There are two necessary elements that must be established in order to find liability for subsection 163(2) penalties:

(a) a false statement in a return, and
(b) knowledge or gross negligence in the making of, assenting to or acquiescing in the making of that false statement.

[17] There can be no question that the Appellant's 2009 tax return and his request for loss carryback contained false statements. The Appellant never owned or operated any kind of a business and therefore could not have had any business income or business expenses — he most certainly did not have business expenses exceeding half a million dollars. His claim for business losses has no foundation in fact and is patently false.

[18] Did the Appellant knowingly make a false statement? I am not satisfied to the requisite degree of certainty that he did. Did he make a false statement in circumstances amounting to gross negligence? The burden of proving gross negligence lies on the Crown. It is not sufficient for the Crown to prove mere negligence; it must go beyond simple negligence and prove that the Appellant was grossly negligent.

[19] Negligence is defined as the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. The concept of negligence is so well known in Anglo-Canadian jurisprudence that no authority need be cited for this definition. However, gross negligence requires something more than mere negligence. Gross negligence must be taken to involve greater

neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting or indifference as to whether the law is complied with or not; see *Venne v. Canada*, [1984] F.C.J. No. 314 (QL). In *Venne*, Justice Strayer of the Federal Court (Trial Division) cautions that subsection 163(2) of the Act "is a penal provision and it must be interpreted restrictively so that if there is a reasonable interpretation which will avoid the penalty in a particular case that construction should be adopted" and the taxpayer should be given the benefit of the doubt. In *Farm Business Consultants Inc. v. Canada*, [1994] T.C.J. No. 760 (QL), Justice Bowman (as he then was) of the Tax Court of Canada stated at paragraph 23 that the words "gross negligence" in subsection 163(2) imply conduct characterized by so high a degree of negligence that it borders on recklessness. In such a case a court must, even in applying a civil standard of proof, scrutinize the evidence with great care and look for a higher degree of probability than would be expected where allegations of a less serious nature are sought to be established (paragraph 28).

[20] It is also well-settled law that gross negligence can include "wilful blindness". The doctrine of wilful blindness is well known to the criminal law. "Wilful blindness" in the context of the criminal law was fully explained by Justice Cory of the Supreme Court of Canada in the decision in *R. v. Hinchey*, [1996] 3 S.C.R. 1128. The rule is that if a party has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge. Stated otherwise, "wilful blindness" occurs where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth, preferring instead to remain ignorant. There is a suspicion which the defendant deliberately omits to turn into certain knowledge. The defendant "shut his eyes" or was "wilfully blind".

[21] It has been held that the concept of "wilful blindness" is applicable to tax cases; see *Canada v. Villeneuve*, 2004 FCA 20, and *Panini v. Canada*, 2006 FCA 224. In *Panini*, Justice Nadon made it clear that the concept of "wilful blindness" is included in "gross negligence" as that term is used in subsection 163(2) of the Act. He stated:

> 43 . . . the law will impute knowledge to a taxpayer who, in circumstances that dictate or strongly suggest that an inquiry should be made with respect to his or her tax situation, refuses or fails to commence such an inquiry without proper justification.

[22] It has been held that in drawing the line between "ordinary" negligence or neglect and "gross" negligence, a number of factors have to be considered:

(a) the magnitude of the omission in relation to the income declared,
(b) the opportunity the taxpayer had to detect the error,
(c) the taxpayer's education and apparent intelligence,
(d) genuine effort to comply.

No single factor predominates. Each must be assigned its proper weight in the context of the overall picture that emerges from the evidence (see *DeCosta v. The Queen*, 2005 TCC 545, at paragraph 11; *Bhatti v. The Queen*, 2013 TCC 143, at paragraph 24; and *McLeod v. The Queen*, 2013 TCC 228, at paragraph 14).

[23] In *Torres v. The Queen*, 2013 TCC 380, Justice C. Miller conducted a very thorough review of the jurisprudence regarding gross negligence penalties under subsection 163(2) of the Act and, in so doing, he was able to distill the governing principles to be applied. I paraphrase his *dicta* found at paragraph 65:

a) Knowledge of a false statement can be imputed by wilful blindness.

b) The concept of wilful blindness can be applied to gross negligence penalties pursuant to subsection 163(2) of the Act . . . .

c) In determining wilful blindness, consideration must be given to the education and experience of the taxpayer.

d) To find wilful blindness there must be a need or a suspicion for an inquiry.

e) Circumstances that would indicate a need for an inquiry prior to filing, or flashing red lights . . ., include the following:

   i) the magnitude of the advantage or omission;

   ii) the blatantness of the false statement and how readily detectable it is;

   iii) the lack of acknowledgment by the tax preparer who prepared the return in the return itself;

   iv) unusual requests made by the tax preparer;

   v) the tax preparer being previously unknown to the taxpayer;

   vi) incomprehensible explanations by the tax preparer;

   vii) whether others engaged the tax preparer or warned against doing so, or the taxpayer himself or herself expresses concern about telling others.

> f) The . . . taxpayer makes no inquiry of the tax preparer to understand the return, nor makes any inquiry of a third party, nor the CRA itself.

[24] This is certainly not an exhaustive list and there may be other factors that may need to be considered depending on the circumstances of any particular case. However, I am of the view that Justice C. Miller provides an excellent template that can be used in analyzing cases such as the one here under consideration. I will proceed to apply the factors enumerated by Justice C. Miller to the case at hand.

Education and Experience of the Taxpayer

[25] The Appellant has a grade 11 education. He presented as an intelligent individual. He has enjoyed steady employment in a skilled trade for 28 years. Although he professes to not understand accounting or tax returns, he still understood concepts of business income and business expenses. The Appellant is not so lacking in education or basic understanding of concepts such as business, or taxation, as to claim ignorance. Education, experience and intelligence are not factors that could relieve the Appellant of a finding he made false statements under circumstances amounting to gross negligence.

Suspicion or Need to Make an Inquiry

[26] There were ample warning signs or "red flags" that should have aroused the Appellant's suspicions and awakened in him the need to make further inquiries.

The Fee Structure

[27] The fee structure proposed by Fiscal Arbitrators is concerning. In prior years, the Appellant paid H&R Block a few hundred dollars to prepare his returns. Fiscal Arbitrators charged him a fee of $500 and up to 20% of any monies refunded by the CRA. This fee structure was so different from that of his previously well-known and trusted tax preparer that it should have given him pause to think about the legitimacy of Fiscal Arbitrators.

Speciousness of the Tax Avoidance Scheme

[28] The scheme proposed by Fiscal Arbitrators was so preposterous as to defy any semblance of credulity even by a very naive person. The Appellant claims that he was told by Fiscal Arbitrators that his home was his business which allowed him to claim all related personal expenses against income. The operation of a home

is not a business. This proposition of Fiscal Arbitrators as it was explained to the Appellant is so patently absurd and ludicrous that no one except the most unsophisticated, ignorant, naive and gullible could believe that he could claim such deductions against income. These expenses, if they existed, were personal expenses, not business expenses, and the Appellant knew this. The alternate theory that there was a way that an individual could be separated from his social insurance number and thus create two separate entities for tax purposes is equally ludicrous and no sane person with a *modicum* of intelligence and life experience in Canada could possible accept this. The scheme advanced by Fiscal Arbitrators just does not pass the "smell test".

Magnitude of the Advantage

[29] The Appellant agreed that he was expecting a refund of close to $36,000 for 2009. This was significantly different from prior years' filings where he only claimed a few thousand dollars, more or less, in refunds. In addition, if the request for loss carryback had been allowed, he would likely not have to pay any income taxes at all for four years of his working career. He agrees that this would not be normal. Although this is likely his understanding in hindsight, he should have realized that this was the result at the time he filed his return. The fact that he did not realize this is due to the fact that he was blinded by the prospect of obtaining huge refunds. The magnitude of the advantage that he was seeking constitutes a glaring red flag that should have made him critically question what Fiscal Arbitrators were doing. He was simply content to let Fiscal Arbitrators carry on without question in the hopes of getting a lot of money.

Blatant False Statement — Readily Detectable

[30] In his return, the Appellant claimed business income as an agent and he also claimed a huge amount of business expenses, exceeding half a million dollars, when he was not actually even engaged in business. This false statement was blatant. He indicates that he did not really review his return. I conclude that, had he taken even a cursory look at his return, he would have easily detected these obvious false statements. Even an unsophisticated person having no business experience would realize that one cannot claim business expenses of over half a million dollars when one is not engaged in business.

Tax Preparer does not Acknowledge Preparing Return

[31] It is obvious that the Appellant paid someone to prepare his tax return. Yet, the tax preparer did not complete the box on the return reserved for tax professionals. This box, on the last page of the return, is right beside the line to be signed by the Appellant certifying the information is correct and complete. The box labelled "For professional tax preparers only" is obvious to the taxpayer who signs the return. The fact that it was left empty should have alerted the Appellant to the fact that the tax preparer may have wished to remain anonymous to the CRA. This may not be a major point, but, when considered cumulatively with all the other red flags, it should have aroused suspicion in the mind of the Appellant.

Tax Preparer Makes Unusual Requests

[32] The Appellant was instructed to sign his return after the word "per" which was handwritten on the signature line. It is clear that he had never been asked to do this before on his tax returns of prior years. He was never told why "per" was on the signature line, nor did he ever question this odd request. This strange request should have aroused the Appellant's suspicions.

Tax Preparer Previously Unknown to Taxpayer

[33] Fiscal Arbitrators were unknown to the Appellant. Prior to 2009, the Appellant had H&R Block, a well-known tax preparer, prepare his returns. The Appellant heard about Fiscal Arbitrators not through the usual advertising or promotional media, but rather through a colleague at work. Fiscal Arbitrators were simply not well known to the Appellant. This is perhaps a small factor but when taken together with all of the other factors it should have alerted the Appellant to undertake some due diligence with regard to the legitimacy of Fiscal Arbitrators. The Appellant did not do so.

Incomprehensible Explanation by Tax Preparer

[34] I have already alluded to the speciousness of the scheme proposed by Fiscal Arbitrators. The scheme was not only ludicrous, but totally incomprehensible. In addition, the letters that were drafted by Fiscal Arbitrators on behalf of the Appellant in response to inquiries made to him by the CRA are complete nonsense and incomprehensible. This may be after the fact conduct, but it does serve to explain the mindset of the Appellant. He simply did not care about the contents of any document that he signed so long as he got a huge refund.

Others do not do it or the Taxpayer is Warned Against it or the Taxpayer is Fearful of Telling Others

[35] This is not a factor in the circumstances of this particular case.

Lack of Inquiries of Other Professionals or of the CRA

[36] The Appellant contends that he simply did not understand his return or the tax savings scheme as it was explained to him by Fiscal Arbitrators. One must wonder why he did not seek clarification from Fiscal Arbitrators or others. I conclude there were sufficient warning signs to cause the Appellant to make further inquiries of the tax preparers themselves, independent advisers or even the CRA, prior to signing his return. As stated by Justice V.A. Miller in *Janovsky v. The Queen*, 2013 TCC 140:

> 24 . . . If he [the taxpayer] indeed did not understand the terminology used by FA in his return and if he did not understand how FA calculated his expenses, then he had a duty to ask others aside from FA. . . .

[37] In the instant case, if the Appellant had looked at his return and if he truly did not understand how Fiscal Arbitrators calculated his alleged business losses or why he even had business losses, then he should have asked some very critical questions of Fiscal Arbitrators. In the absence of a good explanation, he should have sought advice elsewhere. He did not do so. He made no efforts to even determine if this unorthodox and unusual tax savings proposal was even legal. All he wanted was to get a large refund. His failure to seek out advice from other professionals or even from the CRA in the face of such a dubious scheme is indicative of a high degree of negligence amounting to wilful blindness.

Failure to Make any Genuine Efforts to Comply

[38] It is very telling that even after the Appellant received the first letter from the CRA dated July 15, 2010, the Appellant made no efforts at all to try and comply with the law. Instead, he adopted a course of obstructionism at the behest of, and on the instructions of, Fiscal Arbitrators. He should have known on reading the letter from the CRA that there were serious questions concerning the information contained in his return and in his request for loss carryback and he should have seen that the CRA was questioning his business expenses. This was the time that he should have disassociated himself from Fiscal Arbitrators. This

after the fact conduct certainly provides a lens through which this Court can interpret his frame of mind at the time he signed and filed his return.

Appellant's Trust in his Tax Preparer

[39] The Appellant left everything to Fiscal Arbitrators. In other words, he trusted them.

[40] In some cases, a taxpayer can shed blame by pointing to negligent or dishonest professionals in whom the taxpayer reposed his trust and confidence; for example, see *Lavoie c. La Reine*, 2015 CCI 228, a case where the taxpayers relied on a lawyer whom they had known and trusted for more than 30 years and who was a trusted friend. However, cases abound where the taxpayers could not avoid penalties for gross negligence by placing blind faith and trust in their tax preparers without at least taking some steps to verify the correctness of the information supplied in their tax return.

[41] In *Gingras v. Canada*, [2000] T.C.J. No. 541 (QL), Justice Tardif wrote:

> 19 Relying on an expert or on someone who presents himself as such in no way absolves from responsibility those who certify by their signature that their returns are truthful.
>
> . . .
>
> 30 It is the person signing a return of income who is accountable for false information provided in that return, not the agent who completed it, regardless of the agent's skills or qualifications.

[42] In *DeCosta*, above, Chief Justice Bowman stated:

> 12 . . . While of course his accountant must bear some responsibility I do not think it can be said that the appellant can nonchalantly sign his return and turn a blind eye to the omission of an amount that is almost twice as much as that which he declared. So cavalier an attitude goes beyond simple carelessness.

[43] In *Laplante v. The Queen*, 2008 TCC 335, Justice Bédard wrote:

> 15 In any event, the Court finds that the Appellant's negligence (in not looking at his income tax returns at all prior to signing them) was serious enough to justify the use of the somewhat pejorative epithet "gross". The Appellant's attitude was cavalier enough in this case to be tantamount to total indifference as to whether the law was complied with or not. Did the Appellant not admit that, had he looked

> at his income tax returns prior to signing them, he would have been bound to notice the many false statements they contained, statements allegedly made by Mr. Cloutier? The Appellant cannot avoid liability in this case by pointing the finger at his accountant. By attempting to shield himself in this way from any liability for his income tax returns, the Appellant is recklessly abandoning his responsibilities, duties and obligations under the Act. In this case, the Appellant had an obligation under the Act to at least quickly look at his income tax returns before signing them, especially since he himself admitted that, had he done so, he would have seen the false statements made by his accountant.
>
> [Emphasis in original.]

[44] In *Brochu v. The Queen*, 2011 TCC 75, gross negligence penalties were upheld in a case where the taxpayer simply trusted her accountant's statements that everything was fine. She had quickly leafed through the return and claimed that she did not understand the words "business income" and "credit", but yet had not asked her accountant nor anyone else any questions in order to ensure that her income and expenses were properly accounted for. Justice Favreau of this Court was of the view that the fact that the taxpayer did not think it necessary to become informed amounted to carelessness which constituted gross negligence.

[45] In *Bhatti*, above, Justice C. Miller pointed out:

> 30 . . . It is simply insufficient to say I did not review my returns. Blindly entrusting your affairs to another without even a minimal amount of verifying the correctness of the return goes beyond carelessness. So, even if she did not knowingly make a false omission, she certainly displayed the cavalier attitude of not caring one way or the other. . . .

[46] In *Janovsky*, above, Justice V.A. Miller stated:

> 22 The Appellant said he reviewed his return before he signed it and he did not ask any questions. He stated that he placed his trust in FA as they were tax experts. I find this statement to be implausible. He attended one meeting with the FA in 2009. He had never heard of them before and yet between his meeting with them and his filing his return in June 2010, he made no enquiries about the FA. He did not question their credentials or their claims. In his desire to receive a large refund, the Appellant did not try to educate himself about the FA.
>
> 23 Considering the Appellant's education and the magnitude of the false statement he reported in his 2009 return, it is my view that the Appellant knew that the amounts reported in his return were fake.

[47] Another recent example can be found in the matter of *Atutornu v. The Queen*, 2014 TCC 174, where the taxpayers simply blindly relied on the advice of

their tax preparer without reading or reviewing their returns and without making any effort whatsoever to verify the accuracy of their returns.

Conclusion

[48] There is no doubt that the Appellant's 2009 tax return and his request for loss carryback contained false statements — the Appellant did not carry on a business and he did not incur any business losses whatsoever, let alone a business loss exceeding $400,000. These false statements could have easily been detected by him simply by taking a closer look at his return. The Appellant was blinded by the prospect of receiving a large refund which he admits was not normal. He did not check out the credentials of Fiscal Arbitrators and he did not question the speciousness of the tax savings scheme. He did not seek out any advice from anyone else even though he must have known that what was being proposed was very suspicious. He made no efforts to comply with the law. I can come to no other conclusion than that the Appellant was wilfully blind as to the falseness of these statements. As such, he is properly subject to the penalties imposed on him pursuant to subsection 163(2) of the Act.

[49] It is difficult to feel any sympathy for the Appellant; he was blinded by greed. Had he even bothered to consider the information that he, by his signature, certified to be correct and complete, he would have quite easily discovered that his return contained information that was patently false. He would have realized, with just a little bit of thought, that this kind of stratagem was a fraud perpetrated on the CRA and, by extension, on every other Canadian taxpayer. As has often been stated by our courts, our tax system is one of self-assessment and each individual taxpayer has the obligation to ensure that all the information contained in his returns is truthful, complete and accurate. The Appellant totally ignored the numerous red flags that presented themselves to him. He made no effort to verify the accuracy and completeness of his return. As stated by Justice Tardif in *Gingras*, above:

> 31 . . . it is utterly reprehensible to certify by one's signature that the information provided is correct when one knows or ought to know that it contains false statements. Such conduct is a sufficient basis for a finding of gross negligence justifying the assessment of the applicable penalties.

[50] For all of the foregoing reasons, this appeal is dismissed with costs.

Signed at Toronto, Ontario, this 1st day of December 2015.

"Rommel G. Masse"

Masse D.J.

CITATION:	2015 TCC 298
COURT FILE NO.:	2012-3534(IT)G
STYLE OF CAUSE:	PATRICK CHARTRAND v. THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 14, 2015
REASONS FOR JUDGMENT BY:	The Honourable Rommel G. Masse, Deputy Judge
DATE OF JUDGMENT:	December 1, 2015
APPEARANCES:	
For the Appellant:	The Appellant himself
Counsel for the Respondent:	Tony Cheung
COUNSEL OF RECORD:	
For the Appellant:	
Firm:	
For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada