Docket: 2013-1894(IT)G

BETWEEN:

ELTON MAYNARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of Lisa Maynard (2013-1895(IT)I) on November 3, 2015, at Toronto, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the Appellant: Osborne G. Barnwell

Counsel for the Respondent: Craig Maw

JUDGMENT

For the attached reasons for judgment, the appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

The Respondent is entitled to her costs if she wants them.

Signed at Kingston, Ontario, this 28th day of January 2016.

"Rommel G. Masse"

Masse D.J.

Docket: 2013-1895(IT)I

BETWEEN:

LISA MAYNARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the Appellant:	Osborne G. Barnwell
Counsel for the Respondent:	Craig Maw

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Citation: 2016 TCC 21
Date: 20160128
Dockets: 2013-1894(IT)G
2013-1895(IT)I

BETWEEN:

ELTON MAYNARD,
LISA MAYNARD,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

Overview

[1] These two appeals were heard together on common evidence.

[2] Elton and Lisa Maynard are appealing the penalties for gross negligence that were imposed on them pursuant to subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the "Act") in relation to their 2008 taxation year and related requests for loss carryback to the 2005, 2006 and 2007 taxation years. An unscrupulous tax preparer prepared their tax returns in such a way as to claim very large fictitious business losses. These business losses, if allowed, would result in the refund to the Appellants of all or practically all the taxes paid by them or deducted at source for the 2005, 2006, 2007 and 2008 taxation years. The fact is that these claimed business losses never existed. The Appellants never owned or operated any kind of business at all during the 2008 taxation year. The Canada Revenue Agency (the "CRA") denied the losses and penalized the Appellants pursuant to subsection 163(2) of the Act. This matter pertains only to the penalties that were imposed.

Factual Context

[3] Elton and Lisa Maynard were born in Trinidad. Elton came to Canada in 1974, but he returned to Trinidad in order to bring his wife, Lisa, back to Canada. They have been happily married for 33 years. He has a grade 12 education in Trinidad and he also took some drafting courses at Centennial College in Scarborough. These courses were taken over a two-year period and included Autocad, a computerized drafting program. He worked as a draftsperson for Trench Ltd. for 33 years before retiring.

[4] Lisa obtained a grade 12 education in Trinidad. She came to Canada in 1982. Since arriving in Canada, she enjoyed several employments with the city of Toronto and is presently employed as an administrative assistant at the Ministry of Finances of Ontario. She has taken accounting courses at Durham College.

[5] Elton sometimes prepared their tax returns using computer software and other times they would have professionals such as H&R Block prepare the returns for a fee.

[6] Some time in 2005, a colleague at Elton's work recommended an individual named Muntaz Rasool to the Appellants. The colleague never did go into too much detail about his experience with Mr. Rasool. The Appellants believed Mr. Rasool to be a chartered accountant who had been in business for 20 years and who had prepared the colleague's tax returns. They first met Mr. Rasool at a Tim Hortons in Scarborough that was close to Mr. Rasool's home. In fact, any meetings they had with Mr. Rasool were at Tim Hortons. They never met him at his home office. They never asked Mr. Rasool about his credentials, nor did they check out any references other than Elton's colleague. They testified that initially their relationship with Mr. Rasool was comfortable and trusting. According to Lisa, Mr. Rasool was a very pleasant person and the Appellants had an open dialogue with him. They testified that they had no reason not to trust him.

[7] Right from the very first meeting, Mr. Rasool attempted to recruit them to invest in tax planning or investment schemes. The first of these was something called the Universal Healthcare Trust Donation Program (in conjunction with Liberty Wellness Initiative Foundation). This was a gifting program that was supposedly designed to render assistance to disadvantaged people in poverty stricken countries. The Appellants were provided with material purportedly showing that the Premier of Ontario, the Prime Minister of Canada and the Prime Minister of Grenada all endorsed this program. This appeared to give this scheme

some legitimacy. Mr. Rasool convinced Elton to make a $6,000 donation to this program for the 2005 taxation year. Elton was given a T5003 slip indicating that the eligible amount of the gift for tax purposes was $30,000, not $6,000. Mr. Rasool also convinced Lisa to make a $2,500 donation. She was given a T5003 slip indicating that $12,500 was the eligible gift amount rather than $2,500. I find it difficult to understand how a charitable donation can somehow be inflated to five times the amount of the actual donation for tax purposes. The CRA advised the Appellants in August 2007 that it intended to disallow the donations and subsequently did so.

[8] For the 2006 taxation year, Mr. Rasool recruited Elton to invest in a business called StockLogic. Elton invested only $7,000 but somehow claimed business losses amounting to $42,000 related to StockLogic. Elton was advised in 2008 that the CRA was auditing the StockLogic scheme. Later, this business loss was disallowed and Elton was assessed gross negligence penalties pursuant to subsection 163(2) of the Act. I understand that this assessment is currently being litigated.

[9] Mr. Rasool did prepare the Appellants' tax returns for the 2005 through to 2008 taxation years. In the past, the Appellants paid Mr. Rasool $45 for the preparation of each return. When it came time to prepare their 2008 tax returns, they again met Mr. Rasool at Tim Hortons as they always did. They got their documents together, such as T4 slips, to give to him. Mr. Rasool advised them that they had the right to redo their taxes for the last 10 years. Mr. Rasool asked them to contact the CRA and obtain their past returns back to 1999. They did so and they gave all of this information to Mr. Rasool. When the returns were prepared, they again met Mr. Rasool at the Scarborough Town Centre. The Appellants never asked any questions to Mr. Rasool regarding the returns and Mr. Rasool never offered any explanations at all as to what he had done. Mr. Rasool did not inform them what he had found as a result of going over the last 10 years of returns, nor did they ask. The Appellants did not review the returns with Mr. Rasool — in fact, they never even took a look at the returns. The Appellants have absolutely no idea what information was contained in the returns. Mr. Rasool simply flipped the pages and the Appellants simply signed wherever they were told to sign without any question. Mr. Rasool did not provide them with a copy of their returns. In the past, Mr. Rasool had electronically filed their tax returns for 2005, 2006 and 2007. However, Mr. Rasool did not electronically file the 2008 tax returns since he claimed that they were too large to electronically file. Instead, Mr. Rasool instructed the Appellants to file the returns themselves. The Appellants dropped off their returns at the nearby CRA office. The Appellants only paid Mr. Rasool $45

cash for the preparation of their 2008 tax returns. This fee was also in relation to the work done in reviewing their returns for the last 10 years. This is an unusually low fee for reviewing 10 years' worth of tax returns.

[10] Elton's 2008 tax return can be found at Exhibit R-2, Tab 2. Lisa's 2008 tax return can be found at Exhibit R-1, Tab 18. Both returns are dated March 21, 2009. Both of these returns contain some blatantly false information. In his return, Elton claimed business income in the amount of $76,938.67. He also claimed total business expenses of $262,775.12 resulting in business losses of $255,150.57. In her return, Lisa claimed business income in the amount of $50,341.14. She also claimed total business expenses of $123,482.99 resulting in business losses of $115,803.83. All this information contained in their 2008 tax returns is completely and utterly false. Elton's only income during the 2008 taxation year was employment income in the amount of $69,314.12. Lisa's only income during the 2008 taxation year was employment income in the amount of $42,519.98. Neither Elton nor Lisa ever owned or operated any business whatsoever during 2008 and neither one of them ever incurred the business expenses that were claimed. Both of them agree that this false information would have been readily detected by them had they bothered to take a look at their returns. However, it is their evidence that they signed their returns and the related requests for loss carryback without looking at these documents and, in so doing, they certified by their signatures that the information given in these documents is complete and correct — clearly, it was not. They took no steps at all to verify the accuracy of the information in their returns. The Appellants do not know why the word "per" appears on the signature line just before their signatures. They do not remember if that word was there, but clearly it was since they were the last ones to handle the returns before the returns were filed. The returns indicated quite large refunds — $16,304.64 for Elton and $7,553.88 for Lisa. They indicated that they did not see the amount of the refund that appears on the last page of the returns; however, they were told how much the refund would be. They claim that the size of their refunds did not arouse any suspicion in their mind. They did not ask why they were to get such large refunds. They both did not notice that box 490, which is to be completed by their professional tax preparer, was left blank. They did not know that they signed requests for loss carryback which clearly they did. In fact, they did not notice anything at all about their returns since they did not look at them. They both acknowledge that, had they looked at the returns and had they seen the obviously false information, they would not have signed and filed the returns.

[11] The tax returns were assessed as filed and they both received refunds.

[12] Lisa testified that before she got her refund, she got a call from Mr. Rasool stating that she could expect her refund that week and that she had to see him with her cheque book to pay him for his expertise. He was demanding 40% of her tax refund. She responded that she had already paid him $45, his usual fee. He then told her that if she did not pay him, he would call the CRA and tell them to reverse her taxes. She told him that this was extortion and that she would not pay him a dime. She then contacted the CRA in order to report Mr. Rasool's behaviour and to let the CRA know not to let anybody else have access to her tax records. The CRA assured her that Mr. Rasool could not access her records without her permission and that he could not reverse her taxes.

[13] The Appellants only found out there was a problem with their 2008 tax returns in 2011 when they got a letter from the CRA questioning their claimed business losses. Lisa immediately called the CRA to let them know that they must have had the wrong person and they should check the social insurance number since she and her husband had never had any businesses at all. She was convinced that the CRA had made some kind of mistake. Unfortunately, the CRA had not made any mistake. Lisa was devastated, confused and panicky. She had no idea at all that Mr. Rasool had indicated on their returns that they were operating a business. She tried on many occasions to get in touch with Mr. Rasool and she even went to his home. However, Mr. Rasool had fled and was not to be found. She now knew they were in trouble so she tried to get a hold of someone from the CRA to work things out. She also took steps to report Mr. Rasool to the law enforcement authorities since they were the victims of a fraud. She also made enquiries of the governing body of professional chartered accountants to lodge a complaint and she learned that Mr. Rasool was not in fact a chartered accountant. She also lodged complaints with the Better Business Bureau, Equifax and any other organization that she could think of in order to bring Mr. Rasool to task.

[14] The Minister of National Revenue (the "Minister") reassessed the Appellants for the 2008 taxation year disallowing the claimed business losses and applied a penalty pursuant to subsection 163(2) of the Act. The Appellants objected to these reassessments, but the Minister confirmed the reassessments, hence the appeal to this Court.

[15] The Appellants take the position that they honestly and sincerely believed that Mr. Rasool was a responsible professional and that he would prepare their tax returns according to the law and in keeping with his professional responsibilities. They had no idea that he would perpetrate a fraud in the preparation of their returns. They are unsophisticated and law abiding people. They are victims and it

is not fair for them to now have to pay a penalty because they were too trusting and naive. They submit that the fact that they signed their returns without reviewing them may demonstrate negligence, but this does not amount to gross negligence such as to attract the imposition of the harsh penalties provided for in subsection 163(2) of the Act. These appeals should therefore be allowed and referred back to the Minister for reconsideration and reassessment on the basis that the penalties imposed pursuant to subsection 163(2) are not appropriate in the circumstances of this matter. The Appellants also seek their costs.

[16] The Respondent submits that the Appellants either knew that their returns contained false information or they were wilfully blind as to the falsity of the information contained in the returns. It is incumbent on taxpayers in a self-assessing taxation system to ensure that income and expenses are correctly reported. They acknowledge that, had they taken even a moment to review their tax returns before signing, they would have seen the huge business losses and they would not have signed them. They simply signed whatever was put in front of them by their tax preparer without review, without question and without verifying the accuracy of the information. This amounts to gross negligence. These appeals should therefore be dismissed with costs.

Legislative Dispositions

[17] 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 . . .

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

Analysis

[19] There is constant jurisprudence to the effect that our system of taxation is both self-reporting and self-assessing. It relies on the honesty and integrity of the individual taxpayer. It is the taxpayer's duty to report his taxable income completely, correctly and accurately no matter who prepares the return. Therefore, the taxpayer must be vigilant in ensuring the completeness and accuracy of the information contained in his return. Justice Martineau stated in *Northview*

Apartments Ltd. v. Canada (Attorney General), 2009 FC 74, at paragraph 11: "It is the essence of our tax collection system that taxpayers are sole responsible for self-assessment and self-reporting to the CRA."

[20] In the matter of *R. v. Jarvis*, 2002 SCC 73, Justices Iacobucci and Major of the Supreme Court of Canada explained the responsibilities and duties of taxpayers as well as some of the measures in the Act designed to encourage compliance:

> 49 Every person resident in Canada during a given taxation year is obligated to pay tax on his or her taxable income, as computed under rules prescribed by the Act (ITA, s. 2 . . .). The process of tax collection relies primarily upon taxpayer self-assessment and self-reporting: taxpayers are obliged to estimate their annual income tax payable (s. 151), and to disclose this estimate to the CCRA in the income return that they are required to file (s. 150(1)). . . . Upon receipt of a taxpayer's return, the Minister is directed, "with all due dispatch", to conduct an examination and original assessment of the amount of tax to be paid or refunded, and to remit a notice of assessment to this effect (ss. 152(1) and 152(2)). Subject to certain time limitations, the Minister may subsequently reassess or make an additional assessment of a taxpayer's yearly tax liability (s. 152(4)).
>
> 50 While voluntary compliance and self-assessment comprise the essence of the ITA's regulatory structure, the tax system is equipped with "persuasive inducements to encourage taxpayers to disclose their income" . . . . For example, in promotion of the scheme's self-reporting aspect, s. 162 of the ITA creates monetary penalties for persons who fail to file their income returns. Likewise, to encourage care and accuracy in the self-assessment task, s. 163 of the Act sets up penalties of the same sort for persons who repeatedly fail to report required amounts, or who are complicit or grossly negligent in the making of false statements or omissions.
>
> 51 It follows from the tax scheme's basic self-assessment and self-reporting characteristics that the success of its administration depends primarily upon taxpayer forthrightness. As Cory J. stated in *Knox Contracting*, *supra*, at p. 350: "The entire system of levying and collecting income tax is dependent upon the integrity of the taxpayer in reporting and assessing income. If the system is to work, the returns must be honestly completed." It is therefore not surprising that the Act exhibits a concern to limit the possibility that a taxpayer may attempt "to take advantage of the self-reporting system in order to avoid paying his or her full share of the tax burden by violating the rules set forth in the Act" . . . .
>
> [Emphasis added. Citations omitted.]

[21] It has been held that the penalties provided for in section 163 of the Act have been conceived in order to ensure the integrity of our self-assessing and self-reporting system and to encourage a taxpayer to exercise care and accuracy in

the preparation of his return, no matter who prepares the return. In *Sbrollini v. The Queen*, 2015 TCC 178, Justice Boyle of this Court was of the view that the penalty provisions set out in subsection 163(2) of the Act reflect:

> 15 . . . the significance and importance of the requirements of honesty and accuracy in the Canadian self-reporting income tax system. . . .
>
> 16 Such penalties are properly payable . . . if [a taxpayer] knowingly, or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in, the making of false statements or omissions in his returns.

[22] Therefore, the decision of whether or not a taxpayer should be subjected to the penalties under subsection 163(2) of the Act should be considered in the context of the responsibilities and duties of the taxpayer to accurately and completely report his income in a self-reporting and self-assessing system.

[23] 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, participating in, assenting to or acquiescing in the making of, that false statement.

[24] There can be no question that the Appellants' 2008 tax returns and related requests for loss carryback contained false statements. The Appellants never owned or operated any kind of a business during that year and therefore could not have had any business income or business expenses.

[25] I am not satisfied that the Appellants knowingly made any false statements since they were not even aware of what was contained in their returns. They admit that they never so much as glanced at their returns before signing them. I am satisfied however, that the Crown has demonstrated to the requisite degree of proof that the Appellants made, participated in, assented to or acquiesced in the making of, false statements in their returns in circumstances amounting to gross negligence.

[26] There is a difference between ordinary negligence and gross negligence. Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Gross negligence involves greater neglect than simply a failure to use reasonable care. It involves 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 *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).

[27] It is also well-settled law that gross negligence can include "wilful blindness". The concept of "wilful blindness", well known to the criminal law, was 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. "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".

[28] 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.

[29] 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).

[30] 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. He summarized the governing principles to be applied 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 . . . 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 final requirement for wilful blindness is that 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.

[31] This is a not an exhaustive list. There may be other factors that need to be considered depending on the circumstances of any particular case.

[32] In the matter at bar, I am satisfied that the Appellants did not knowingly make any false statements. It is their own testimony that they simply did not know what was in their 2008 tax returns since they never even looked at them. However, I am satisfied that they made, participated in, assented to or acquiesced in the

making of, the false statements in circumstances amounting to gross negligence. At the very least, they were wilfully blind. I come to this conclusion for the reasons that follow.

[33] The Appellants have the equivalent of a high school education here in Canada. They have been in Canada for a long time. They are intelligent and articulate. They have taken post-secondary school courses that were very useful to them in their line of work. They have been steadily employed in positions of responsibility and both earn a good living. Elton has knowledge of the tax system since he has prepared his wife's returns and his own in the past. He and his wife both have a basic understanding of business organization and concepts of profit and loss. They are not so lacking in education or life experience as to claim ignorance. Education, experience and intelligence are not factors that could relieve the Appellants of a finding that they made false statements under circumstances amounting to gross negligence.

[34] There were ample warning signs that should have aroused the Appellants' suspicions and motivated in them the need to make further inquiries.

(a) **Tax Preparer Previously Unknown to Taxpayers** — Mr. Rasool was previously unknown to the Appellants. Mr. Rasool was not affiliated with any well-known tax preparers or accounting firms. The Appellants did not know anything about him other than he prepared the colleague's tax returns and the colleague told them he was a chartered accountant. The Appellants retained his services on the recommendation of just one co-worker. Other than this one recommendation, the Appellants did not ask for or check out any other references. The Appellants did not check out his credentials. This is perhaps a small factor, but when taken together with all the other factors, it should have alerted the Appellants to undertake a bit more due diligence with regard to the legitimacy of Mr. Rasool.

(b) **Venue of the Meetings** — The Appellants never met Mr. Rasool at his office; they only met him at Tim Hortons or at the Scarborough Town Centre. One has to ask, why would a chartered accountant with 20 years of experience receive clients elsewhere than at his place of business? These are very public places and, as such, are not conducive to the discussion of highly confidential matters such as the preparation of tax returns, tax planning and investment opportunities. This is

perhaps a small factor, but when taken together with all the other factors, it should have alerted the Appellants to exercise more care.

(c) **Questionable Prior Dealings** — The Appellants testified that they had no reason to be suspicious of Mr. Rasool. However, Mr. Rasool had convinced them to participate in two programs that were subsequently challenged by the CRA — the Universal Healthcare Trust Donation Program and the StockLogic investment scheme. The Appellants knew before they filed their 2008 tax returns that both of these schemes which had been introduced to them by Mr. Rasool were being challenged by the CRA and that they could be liable to repay significant amounts as a result. This is another reason why they should have carefully considered the information contained in their 2008 filings.

(d) **The Fee Structure** — Mr. Rasool was charging the Appellants a flat fee of $45 per return. He charged this same fee even when he reviewed the Appellants' returns for the last 10 years. This would seem to be inordinately low for the amount of work involved in reviewing 10 years' worth of returns. It is hard to believe that a chartered accountant with 20 years of experience would only charge $45 for the preparation of a tax return and the review of the last 10 years of returns. This should have been a red flag for the Appellants.

(e) **Lack of Explanations by Tax Preparer** — Mr. Rasool did not offer any explanations whatsoever concerning the preparation of the Appellants' tax returns. A true professional would want to make sure that his clients understood the scope of what he was doing and why. Mr. Rasool could not be bothered to take the time to explain the work that he did — he simply told the Appellants where to sign. What is even more startling is that the Appellants did not ask any questions at all of Mr. Rasool as to what was contained in their returns, as to why they would get such large refunds and as to what Mr. Rasool had found as a result of reviewing the past 10 years of returns. A reasonable and diligent taxpayer would at the very least be curious and would want to know and understand what his accountant had done on his behalf and how it is that the tax preparer was able to get such a significant refund. That is simply human nature.

(f) **Manner of Filing** — In the past, Mr. Rasool had always used electronic filing. This time, he gave the returns to the Appellants and told them to file the returns themselves. On being asked why, he simply stated that the returns were too large to be electronically filed. This explanation is dubious. Mr. Rasool had not given the Appellants a copy of their returns. A professional accountant would have prepared a copy and provided it to his client with instructions to preserve the copy for future reference. In any event, even if Mr. Rasool did not give them a copy, it would only have been prudent for the Appellants to make their own copy for their own records. This, they did not do.

All the foregoing factors should have aroused the Appellants' suspicions and should have incited them to exercise more diligence in the preparation and filing of their returns and to question what was going on. However, they did not. In fact, they did nothing, choosing instead to remain blissfully ignorant. Such conduct is evidence of wilful blindness amounting to gross negligence.

[35] Quite apart from any consideration of wilful blindness, I am of the view that the Appellants have demonstrated conduct amounting to gross negligence. As has often been stated by our courts, our tax system is one of self-assessment and self-reporting. Each individual taxpayer has the obligation to ensure that all the information contained in his return is complete and accurate regardless of who prepares the return. The Appellants made no effort whatsoever to verify the accuracy and completeness of their returns. They simply signed their returns, thus certifying that the returns were complete and accurate, and then they filed their returns without even looking at them. They completely disregarded their duty to verify the accuracy and completeness of the information contained in their returns. Had they made even the most minimal effort, they would have quickly and easily discovered the blatantly false information contained in their returns. The Appellants cannot be heard to say, in an effort to deflect blame away from themselves, that they were the victims of a dishonest tax preparer when they made no effort at all to verify the accuracy of their returns.

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

> 15 . . . 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. . . .

[37] 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 or 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 get informed amounted to carelessness, which constituted gross negligence.

[38] 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.

[39] It has been held that the failure to review one's return before signing and filing it may, in and of itself, be sufficient to amount to gross negligence. As stated by Justice Tardif in *Gingras v. Canada*, [2000] T.C.J. No. 541 (QL):

> 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.

[40] In *Laplante*, above, 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? . . . 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.]

[41] Even more recently, Justice Bowie stated in *Brown v. The Queen*, 2009 TCC 28:

> 20 Quite apart from all of that, in respect of the gross negligence penalties under the *Income Tax Act*, the Appellant in his own evidence early on made it clear that he signed his returns for each of the four years under appeal without having paid the least attention to what income was included in them and what expenses were claimed in them. He said that he kept the records that he kept, prepared spreadsheets from them and gave them to a tax preparer who, in each year, prepared the returns for him based on the material that he gave her. We did not hear from her on that, but taking that statement at its face value, it still leaves the Appellant with an onus to look at the completed return before signing it and filing it with the Minister. The declaration that the taxpayer makes when he signs that form is,
>
> > I certify that the information given on this return and in any documents attached is correct, complete and fully discloses all my income.
>
> To sign an income tax return and make that certification without having even glanced at the contents of the return, because that is what I understood his evidence to be is of itself, in my view, gross negligence that justifies the penalties.

[42] 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 . . . .

[43] I am of the view that, in the circumstances of this matter, the Appellants were completely remiss in discharging their duties under the Act. They made no effort at all to comply with their duty to accurately and completely report their income and allowable expenses in their 2008 tax returns. Their actions throughout are not only negligent, but are grossly negligent. They showed indifference as to whether or not they complied with the law.

Conclusion

[44] There is no doubt that the Appellants' 2008 tax returns and their requests for loss carryback contained false statements — they did not carry on a business and they did not incur any business losses whatsoever. In the circumstances of this matter, I can come to no other conclusion than that the Appellants were wilfully blind and grossly negligent as to the falsity of these statements. This is especially so since they signed their returns certifying the accuracy of the information

contained therein without bothering to even look at the returns or make any effort at all to verify the returns' accuracy. As such, they are properly subject to the penalties imposed pursuant to subsection 163(2) of the Act.

[45] For all the foregoing reasons, these appeals are dismissed. The Respondent is entitled to her costs if she wants them.

Signed at Kingston, Ontario, this 28th day of January 2016.

"Rommel G. Masse"

Masse D.J.

CITATION:	2016 TCC 21
COURT FILE NOS.:	2013-1894(IT)G 2013-1895(IT)I
STYLE OF CAUSE:	ELTON MAYNARD, LISA MAYNARD, v. THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 3, 2015
REASONS FOR JUDGMENT BY:	The Honourable Rommel G. Masse, Deputy Judge
DATE OF JUDGMENT:	January 28, 2016

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