Docket: 2012-3183(IT)G

BETWEEN:

GILLES ST-YVES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on May 31, 2019, at Montréal, Quebec.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the appellant:	Jacques Renaud
Counsel for the respondent:	Julien Dubé-Senécal

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 3rd day of September 2019.

"Patrick Boyle"

Boyle J.

Translation certified true
on this 10th day of February 2020.

François Brunet, Revisor

Citation: 2019 TCC 186
Date: 20190903
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BETWEEN:

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Appellant,

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REASONS FOR JUDGMENT

Boyle J.

Introduction

[1] The taxpayer filed a notice of appeal regarding the denial of the deduction for [TRANSLATION] "human taxation expenses" incurred in his 2008 taxation year and regarding the penalties assessed under subsection 163(2) because he had claimed such deductions. He claimed the deduction for those expenses separately from the business expenses deduction. At the start of the hearing, counsel for the appellant withdrew the issue of whether Mr. St-Yves was entitled to deduct those amounts in 2008. Consequently, the appeal concerns only the question as to whether it was appropriate to impose penalties under subsection 163(2), which the respondent is responsible for demonstrating.

[2] Subsection 163(2) reads as follows:

False statements or omissions	Faux énoncés ou omissions
(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	(2) Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration […] produit[e] […] pour une année

statement or omission in a return […] filed…in respect of a taxation year for the purposes of this Act, is liable to a penalty […]	d'imposition pour l'application de la présente loi, ou y participe, y consent ou y acquiesce est passible d'une pénalité […]

[3] It is not disputed that the 2008 income tax return contained a false statement. Therefore, the respondent must establish that this false statement was made knowingly or under circumstances amounting to gross negligence.

[4] In *Wynter v. Canada*, 2017 FCA 195, the Federal Court of Appeal addressed wilful ignorance (blindness) at paragraphs 13 and 16:

> [13] A taxpayer is wilfully blind in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know, or studiously avoids, the truth. The concept is one of deliberate ignorance: *R. v. Briscoe*, 2010 SCC 13 at paras. 23-24, [2010] 1 S.C.R. 411 (*Briscoe*); *Sansregret* at para. 24. In these circumstances, the doctrine of wilful blindness imputes knowledge to a taxpayer: *Briscoe* at para. 21. Wilful blindness is the doctrine or mechanism by which the knowledge requirement under subsection 163(2) is met.
>
> . . .
>
> [16] In sum, the law will impute knowledge to a taxpayer who, in circumstances that suggest inquiry should be made, chooses not to do so. The knowledge requirement is satisfied through the choice of the taxpayer not to inquire, not through a positive finding of an intention to cheat.

[5] At paragraphs 18 to 21 of *Wynter*, the Court makes a distinction between gross negligence and wilful blindness:

> [18] Gross negligence is distinct from wilful blindness. It arises where the taxpayer's conduct is found to fall markedly below what would be expected of a reasonable taxpayer. Simply put, if the wilfully blind taxpayer knew better, the grossly negligent taxpayer ought to have known better.
>
> [19] Gross negligence requires a higher degree of neglect than a mere failure to take reasonable care. It is a marked or significant departure from what would be expected. It is more than carelessness or misstatements. The point is captured in the decision of this Court in *Zsoldos v. Canada (Attorney General)*, 2004 FCA 338 at para. 21, 2004 D.T.C. 6672:
>
>> In assessing the penalties for gross negligence, the Minister must prove a high degree of negligence, one that is tantamount to

> intentional acting or an indifference as to whether the law is complied with or not. (See *Venne v. R.* (1984), 84 D.T.C. 6247 (Fed. T.D.), at 6256.)

> [20] There is no question that, while conceptually different, gross negligence and wilful blindness may merge to some extent in their application. A taxpayer who turns a blind eye to the truth and accuracy of statements made in their income tax return is wilfully blind, and is also grossly negligent. The converse is not, however, necessarily true. A grossly negligent taxpayer is not necessarily wilfully blind. The possibility of this dual characterization of the same conduct may, on occasion, give rise to imprecision in the jurisprudence in the description of the alternative ways in which the Crown may meet its burden. Similarly, the common practice of referring to penalties imposed under subsection 163(2) as “gross negligence penalties” blurs the fact that the penalties may arise under either the knowledge or gross negligence heading. This ought to be avoided. What is at issue under subsection 163(2) is a penalty, which may be imposed either by a finding of knowledge or a finding of gross negligence.

> [21] While subjective considerations may play a role in either analysis, gross negligence is determined with reference to an objective test. In particular, where gross negligence is alleged, I would expect consideration of whether the conduct of the taxpayer at issue is such a marked departure from what would be expected that it constitutes a high degree of negligence sufficient to be characterized as a marked departure from the standards, practices, and due diligence expected of a responsible taxpayer. The cautionary words of the Supreme Court of Canada in *Guindon*, at paragraph 61, are equally applicable here; these penalties “are meant to capture serious conduct, not ordinary negligence or simple mistakes”.

[6] At paragraph 65 of *Torres v. The Queen*, 2013 TCC 380, Justice Campbell Miller of our Court provides a useful list of factors to consider when examining cases of wilful ignorance (blindness):

> [65] Based on this jurisprudence and the evidence that I have heard in the six Appeals before me, I draw the following principles:
>
> 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 and it is appropriate to do so in the cases before me.
>
> 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 as I called it in the *Bhatti* decision, 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.

[7] Justice Campbell Miller's decision in *Torres* was cited with approval by the Federal Court of Appeal in *Strachan v. Canada*, 2015 FCA 60. His pertinent and targeted approach has been applied many times by our Court when examining the matter of wilful ignorance within the context of the facts and circumstances of a given taxpayer's situation for the purpose of assessing penalties under subsection 163(2).

[8] In the light of the evidence submitted, I am convinced that, as a result of his wilful ignorance, Mr. St-Yves was aware of the false statement and that the circumstances of the false statement amounted to gross negligence by Mr. St-Yves.

[9] The reasons for that finding are presented below.

[10] Mr. St-Yves completed Secondary V as well as postsecondary courses in evaluation and appraisal in the construction field. For many years, he had a

successful career as an appraiser. For nearly a decade, he carried on a business jointly with his spouse through a corporation. He continues to operate his construction appraisal business as a sole proprietorship.

[11] Mr. St-Yves knows the difference between business expenses and personal expenses. Before being introduced to the concept of human taxation, he understood that personal expenses are generally not deductible and that one cannot evade taxation by claiming deductions of personal expenses.

[12] In 2008, he reported his business expenses separately from his personal expenses and claimed them as separate deductions in his income tax return. The fact that the expenses in question were inarguably personal in nature is not disputed and was made perfectly clear from the schedule attached to his income tax return. That schedule reported numerous expenses from the SAQ, Coiffure Sublime salon, La Vie en Rose boutique and a jewellery store. The appellant made no attempt to justify those expenses as being deductible in connection with his business activities.

[13] Along with many other people, Mr. St-Yves attended a meeting with Serge Frechette in a room located in a mall. During that meeting, they were introduced to the concept of human taxation. From what the appellant understood, it was a way to deduct personal expenses by making a distinction between the natural person and the legal entity. He stated that the natural person is a bit like a business because he was assigned a social insurance number.

[14] Mr. St-Yves admitted that, at the meeting, he had found it [TRANSLATION] "strange at first" that a person can avoid taxation and that such a suggestion did not seem very logical to him. However, by the end of the presentation, which lasted two or three hours, his doubts and concerns had dissipated and he did not ask any questions. Having heard all of Mr. Frechette's explanations and answers to the questions other people asked was enough for him.

[15] The appellant had never met Mr. Frechette before that meeting and did not know who he was. He had met him through Mr. Goyette. He had never heard of Mr. St-Marie and had never hired him as an accountant or to prepare his tax returns. He also did not know the first lawyer he consulted about this matter. Mr. St-Marie and the lawyer were both recommended by Mr. Frechette and/or Mr. Goyette.

[16] Mr. St-Yves stated that he had paid Mr. Frechette and Mr. St-Marie $5,200 for the services they provided for his 2008 income tax returns. That amount did not include any part of the additional $15,000 he had paid to Mr. Goyette.

[17] The appellant did not consult an accountant about deducting personal expenses on the basis of the concept of human taxation presented by Mr. Frechette, even though his company had retained the services of an accountant for a number of years. Nor did he discuss the concept with a lawyer or any other tax specialist, consult with the Canada Revenue Agency (the Agency) or refer to the Agency's publications or resources.

[18] The $105,000 deduction in personal expenses under "other expenses" reduced Mr. St-Yves' taxable income to under $10,000.

[19] It was Mr. St-Yves' spouse who took care of his personal accounting and the business' accounting. She had also filed Mr. St-Yves' income tax returns for many years prior to 2008. She had attended Mr. Frechette's presentation with him.

[20] Mr. St-Yves stated that, for 2009 and the subsequent years, he did not claim expense deductions on the basis of human taxation. He explained that this was because he had lost faith in the concept after being questioned by the Agency and because his spouse had pressured him.

[21] His spouse did not testify. No reason for this was provided. The Court was informed that she had also made a similar deduction, though of a lower amount, but had not objected to her reassessment. I can infer that what his spouse had told the Court about Mr. Frechette's presentation and how her husband had understood that presentation would not have been of any help to Mr. St-Yves.

[22] Although he had lost faith in Mr. Frechette's concept of human taxation when he filed his 2009 income tax return, Mr. St-Yves nevertheless continued to consult the accountant and lawyer recommended by Mr. Frechette and Mr. Goyette to respond to the Agency's letters, obtain advice about his objection and, some years later, obtain advice on his notice of appeal. I find this very illogical. Nevertheless, this confirms that Mr. St-Yves was willing to consult Mr. Frechette and his colleagues, without necessarily trusting them. I can infer that, from the outset, Mr. St-Yves was perhaps far less convinced of the legitimacy of Mr. Frechette's plan than he now claims.

[23] For these reasons, the appeal is dismissed, with costs.

Signed at Ottawa, Canada, this 3rd day of September 2019.

"Patrick Boyle"

Boyle J.

Translation certified true
on this 10th day of February 2020.

François Brunet, Revisor

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PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 31, 2019
REASONS FOR JUDGMENT BY:	The Honourable Justice Patrick Boyle
DATE OF JUDGMENT:	September 3, 2019

APPEARANCES:

Counsel for the appellant:	Jacques Renaud
Counsel for the respondent:	Julien Dubé-Senécal

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