Docket: 2013-705(IT)G

BETWEEN:

PAUL C. GOLINI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on September 12, 2013 at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Geneviève Léveillé and Yves St-Cyr
Counsel for the Respondent:	Aleksandrs Zemdegs and Marie-Therese Boris

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ORDER

WHEREAS the Respondent has brought a Motion pursuant to Rule 53 of the *Tax Court of Canada Rules (General Procedure)* to strike certain parts of the Appellant's Amended Notice of Appeal.

IT IS HEREBY ORDERED that paragraphs 50 to 53, 55(a) and 57 to 64 of the Amended Notice of Appeal are struck.

Costs shall be in the cause.

Signed at Ottawa, Canada, this 19th day of September 2013.

"Campbell J. Miller"

C. Miller J.

Citation: 2013 TCC 293
Date: 20130919
Docket: 2013-705(IT)G

BETWEEN:

PAUL C. GOLINI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

C. Miller J.

[1] The Respondent has brought a Motion for an Order pursuant to section 53 of the *Tax Court of Canada Rules (General Procedure)* to strike out paragraphs 50, 51, 52, 53, 55(a) and 57 through 64 of the Amended Notice of Appeal (the "impugned paragraphs") attached as Appendix A to these Reasons, on the basis they disclose no reasonable grounds for appeal, contain allegations that are immaterial, frivolous or vexatious and are likely to prejudice or delay the fair hearing of this appeal. The Appellant counters that there is a triable issue raised by the impugned paragraphs, being the validity of the reassessment in issue, and that it is premature to assess the chance of success of that issue and would therefore be inappropriate to strike the impugned paragraphs.

[2] Some procedural history is required to grasp the import of the Parties' respective positions. This is taken from the Parties' own written submissions:

> Appellant's Written Submissions
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> …
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> 5. The Minister of National Revenue (the "Minister") initially assessed the appellant's tax liability for the 2008 taxation year on September 8, 2009.

6. In June 2012, the appellant was informed that his personal income tax return for the 2008 taxation year had been selected for audit.

…

Factum of the Respondent

…

7. In June 2012, the appellant was informed that his 2008 income tax return had been selected for audit, and shortly thereafter the CRA requested from the appellant a waiver of the normal assessment period applicable for 2008. No waiver was provided.

…

Appellant's Written Submissions

…

7. The appellant thereafter collaborated with the Canada Revenue Agency ("CRA") in order to provide the information requested in the initial contact letter.

…

Factum of the Respondent

…

10. On August 16, 2012 the CRA proposed to reassess the appellant's tax liability for 2008 by adding to his income $6 million, denying his claimed interest expense of $438,626, and imposing a penalty pursuant to subsection 163(2) of the *Income Tax Act*. The CRA again requested that the appellant provide a waiver of the normal assessment period applicable for 2008.

11. The appellant requested more information from the CRA in respect of the proposed reassessment and, by letter dated August 24, 2012, the CRA advised the appellant that:

    (a) the $6 million loan was a shareholder benefit or an indirect payment for the benefit of the appellant resulting in an income inclusion under subsections 15(1) and 56(2) of the *Act;*

(b) interest deductions were being denied as no amount of interest was paid or payable in the year; and

(c) the CRA considered the $6 million loan to be a sham.

12. The appellant then made further representations to the CRA, which issued a third proposal letter in response dated August 31, 2012 in which it maintained denying the interest deduction and proposed that the $6 million income inclusion would be made pursuant to subsection 84(1) - i.e. a deemed dividend when there is an increase in paid up capital of a company without a corresponding change in its assets or liabilities — as the loan to the appellant from Metropac was not real.

…

Appellant's Written Submissions

…

8. The normal assessment period for the appellant's 2008 taxation year ended on September 8, 2012.

9. By notice of reassessment dated September 7, 2012 (the "Reassessment"), the Minister reassessed the appellant's tax liability by adding a taxable dividend in the amount of $7,500,000 and by denying interest expenses in the amount of $438,626 in computing his taxation income for the 2008 taxation year.

10. In early November 2012, the appellant received, by regular mail, the Reassessment.

…

Factum of the Respondent

…

15. The appellant objected to the 2008 reassessment by notification dated November 13, 2012. Following the service of his objection, the appellant asked for information supporting the reassessment and was informed that the reassessment was a "protective reassessment" and that the audit is ongoing.

16. The appellant, having waited until 90 days had elapsed after service of the notification of objection, appealed to this Court on February 25, 2013.

…

Appellant's Written Submissions

…

14. On January 25, 2013, the appellant requested, by way of application under the *Privacy Act* ("PA"), all documentation in possession of the CRA relating to the appellant's 2008 taxation year and specifically the audit report.

15. By way of letter dated January 31, 2013, the CRA confirmed that the appellant's 2008 tax return was under review by the Audit Division of the CRA and that information and documentation supporting the Reassessment would be provided upon completion of the CRA's review of the appellant's 2008 tax return.

16. On February 25, 2013, the appellant filed his notice of appeal with this Court.

17. By way of letter dated March 12, 2013, the CRA responded to the appellant's PA request. The letter outlined the CRA's refusal to provide the audit report or any other documentation supporting the Reassessment on the basis that the disclosure could reasonably be expected to be injurious to the enforcement of any law of Canada or to the conduct of lawful investigations.

…

[3] Part of this history is also set out in the Appellant's Amended Notice of Appeal: Paragraphs 35 to 45 of the Amended Notice of Appeal are attached as Appendix B to these Reasons.

[4] It is unnecessary to go into great detail regarding the substance of the issue with respect to the correctness of the assessment, other than to indicate that it revolves around a reorganization in 2008 by the Appellant of his corporate holdings.

[5] It is clear from a review of the impugned paragraphs that the Appellant also wishes to challenge the validity of the Minister of the National Revenue's (the "Minister") protective assessment. The Appellant's position is that the Minister has issued the protective assessment solely to allow time to proceed with an audit, and that this is not in accordance with correct procedure as established by caselaw (the Appellant refers to *Imperial Oil v H.M.Q.*,[1] *Canada v Loewen*,[2] *126633 Canada Ltée*

[1] 2003 TCC 46.

v The Queen,[3] and *Satin Finish Hardwood Flooring (Ontario) Ltd., v Canada*[4]). According to the Appellant, the Minister is trying to do indirectly what cannot be done directly, rendering the assessment invalid.

[6] The Respondent argues that the decision of the Federal Court of Appeal in *Karda v H.M.Q.*[5] is a complete bar to the Appellant's position, and, even if not, the Respondent relies on the cases of *Western Minerals Ltd v M.N.R.*,[6] *Anchor Pointe Energy Ltd. v Canada*,[7] *Imperial Oil* and *Loewen* to the effect that there has been no procedural failure justifying invalidating the assessment.

[7] For the impugned paragraphs to be struck, it must be plain and obvious that reliance on them discloses no reasonable cause of action: in effect, pleading these provisions is an exercise in futility.

[8] It will be helpful to review the caselaw provided by counsel to determine what exactly is the law on challenging the validity of an assessment, as opposed to the correctness of an assessment. I will then consider whether indeed there is any prospect of success by the Appellant. A good starting point is the recent decision of the Federal Court of Appeal in *Ereiser v Canada*,[8] in which the court stated:

> 21. Mr. Ereiser is seeking from the Tax Court of Canada an order vacating the reassessments under appeal. That is the appropriate remedy in an income tax appeal for an assessment (including a reassessment) that is found not to be valid, or that is found not to be correct. I use the term valid to describe an assessment made in compliance with the procedural provisions of the *Income Tax Act*, and correct to describe an assessment in which the

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2 2004 FCA 146.

3 2008 TCC 132.

4 96 DTC 1402.

5 2006 FCA 238; 2005 TCC 564.

6 62 DTC 1163 (S.C.C.).

7 2007 FCA 188.

8 2013 FCA 20.

amount of tax assessed is based on the applicable provisions of the *Income Tax Act*, correctly interpreted and applied to the relevant facts.

22. The procedural provisions of the *Income Tax Act* include those relating to statutory limitation periods. Generally, those provisions deprive the Minister of the legal authority to assess tax after the expiry of a certain period of time – the period defined in the *Income Tax Act* as the "normal reassessment period" – unless a statutory exception applies.

…

27. To understand the role of the Tax Court of Canada in income tax appeals, it is useful to begin with subsection 152(8) of the *Income Tax Act*, which sets out the legal effect of an assessment. It reads as follows:

152. (8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.	**152.** (8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

…

31. Based on these provisions, this Court has held that the role of the Tax Court of Canada in an appeal of an income tax assessment is to determine the validity and correctness of the assessment based on the relevant provisions of the *Income Tax Act* and the facts giving rise to the taxpayer's statutory liability. Logically, the conduct of a tax official who authorizes an assessment is not relevant to the determination of that statutory liability. It is axiomatic that the wrongful conduct by an income tax official is not relevant to the determination of the validity or correctness of an assessment. This is explained in *Roitman* (cited above) at paragraph 21:

> 21. It is also settled law that the Tax Court of Canada does not have jurisdiction to set aside an assessment on the basis of abuse of process or abuse of power (see *Main Rehabilitation Co. Ltd. v. The Queen*, [2004] F.C.J. No. 2030, 2004 FCA 403, at paragraph 6; *Obonsawin v. The Queen*, 2004 G.T.C. 131(T.C.C.); *Burrows v. Canada*, [2005] T.C.J. No. 614, 2005 TCC 761;*Hardtke v. Canada*, [2005] T.C.J. No. 188, 2005 TCC 263)

[9] The Federal Court of Appeal has drawn an appropriate distinction between the validity of an assessment and the correctness of an assessment. This Court has jurisdiction to deal with both. It is also clear that any wrongful conduct by a Canada Revenue Agency ("CRA") officer has no bearing on the validity of the assessment. The Appellant's argument does not rely on any wrongful conduct of a CRA officer in this case, but simply that the issuing of the protective assessment was not carried out in the manner required by the law.

[10] I turn next to the case of *Karda*, a case that I decided in 2005. It is worth repeating some of what I had to say in that decision, as there are some strong similarities between Mr. Karda's case and Mr. Golini's.

> 25. The Appellant argues that the only reason the June 2, 2000 reassessment was issued was because Mr. Karda would not provide a waiver, effectively saying to the taxpayer if you do not provide a waiver, the Government will deprive you of the benefit of the three-year limitation period. This, according to the Appellant, is not a reassessment as a reassessment is a process only finalized upon issuance of the notice. There is no process where the Minister does not even identify an error in the prior reassessment. A reassessment denying all the Appellant's claims simply to meet the limitation period is not a valid reassessment. With respect, I disagree.
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> …
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> 26. President Thorson in *Provincial Paper, Limited v. M.N.R. [10]* stated:
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> ... It is, therefore, idle to attempt to define what the Minister must do to make a proper assessment. It is exclusively for him to decide how he should, in any given case, ascertain and fix the liability of the taxpayer. The extent of the investigation that he should make, if any, is for him to decide. Of necessity it will not be the same in all cases.
>
> But the basic fallacy in the contention lies in the assumption that the Minister is precluded from ascertaining and fixing a taxpayer's liability on the basis of the assumed correctness of his income tax return but must do something else and that if he does not do so he has not made an assessment. While the Minister is not bound by the taxpayer's return, as was emphasized in the *Dezura* case (*supra*), there is nothing in the Act to prevent him from accepting it as correct and fixing the taxpayer's liability accordingly. In *Davidson v. The King*, (1945) Ex. C.R. 160 at 170, I made the statement that the taxpayer's own return of his income, while not binding upon the Minister, may be the basis of the assessment made by him and I pointed out

that it was reasonable that this should be so, since the taxpayer knew better than anyone else what his income was.

The Minister may, therefore, properly decide to accept a taxpayer's income tax return as a correct statement of his taxable income and merely check the computations of tax in it and without any further examination or investigation fix his tax liability accordingly. If he does so it cannot be said that he has not made an assessment.

While these comments apply to an assessment, as opposed to a reassessment, I believe the principle can be applied to the reassessment; and that is, that the Minister must do something, albeit that something may be minimal. Mr. Fitzsimmons, for the Appellant, puts it that the Minister at the stage of a reassessment must identify an error, otherwise there has not been a valid process of reassessment.

28. What did the Minister do within the period from March to June 2000? The Minister reviewed the file, determined further information was required, requested such information, and having not received it requested a waiver, which request was refused. The Minister then issued the Notice of Reassessment. CCRA's effort goes well beyond a cursory review. To nullify a reassessment on the basis the Minister did not identify an error in a prior reassessment under such circumstances, where the Minister has not received additional information requested from the taxpayer, would severely handcuff the Minister.

29. The Minister has three years to assess a taxpayer (longer if the conditions in paragraph 152(4)*(a)*are met). In most circumstances this should be sufficient time to render a valid assessment or reassessment. And, the taxpayer should have some certainty that after that three-year period, barring misrepresentation, the Government cannot review the taxpayer's tax situation. Yet, there are going to be circumstances where more time is required - the taxpayer and the Government will both recognize this and the taxpayer will obligingly provide a waiver of the limitation. Where, as here, the taxpayer does not provide a waiver, the Government has a choice. It can render what Mr. Fitzsimmons calls "a protective reassessment", or it can gamble it can prove the taxpayer made a misrepresentation and reassess after the limitation. In issuing the reassessment on June 2, 2000, after a lengthy history of dealing with Mr. Karda, CCRA is telling Mr.Karda that it does not believe the prior reassessment is accurate; indeed, there are errors, yet without more information from Mr. Karda, the Minister is unable to be more specific in disallowing all claims. I see nothing so inappropriate in that approach as to render the reassessment invalid. There was a review, a deliberation, and based on the information received, a Notice of

> Reassessment was issued within the three-year period. It is a valid reassessment.

[11] In a brief decision of the Federal Court of Appeal in *Karda*, the court stated:

> 2. The appellant makes two submissions in support of his appeal. With regard to the first one, we see no merit in his argument that the Notice of Reassessment of June 2, 2000, is invalid because the purpose thereof was to prevent the expiry of the three-year limitation. In our view, having requested additional information from the appellant and not having received that information, and having requested a waiver from the appellant which the appellant refused to give, the Minister was clearly entitled to issue a reassessment to protect his rights prior to the expiry of the three-year period. We therefore see no error on the Judge's part in finding that the reassessment was valid.

[12] The Federal Court of Appeal is clear there is nothing procedurally untoward in the Minister issuing a protective assessment where there has been a request for information from the Appellant, none is forthcoming and a subsequent request for a waiver has been refused. I do not believe this necessarily dismisses my view at trial that there must also be at least some review by the CRA and a deliberation. It is this point that the Appellant suggests is unknown without further examination. The Appellant argues that if the Minister did virtually nothing, but reassessed simply anticipating the results of an audit, that had not been completed, then the minimal review required has not been met and there has been a procedural failure invalidating the assessment.

[13] Before addressing this point in relation to the facts as set out in the Amended Notice of Appeal, I shall review some of the other cases referred to me.

[14] In the Supreme Court of Canada decision of *Western Minerals*, the Appellant contended the initial assessment was a nullity because at the time it was issued, after a brief 15 minute review of the taxpayer's return, it had been decided to conduct a further examination of the return. The court ruled it was not for the court to prescribe the necessary activity of a CRA exam for there to be a valid assessment, and further, Justice Martland stated:

> … I cannot agree that that which would constitute a valid assessment if not accompanied by a present intention to conduct a further examination is not a valid assessment if that intention does exist. In my opinion there can be a valid assessment made even though a further examination of the return is intended. …

[15] The Appellant, however, relies on the following comment from Former Chief Justice Bowman in the *Satin Finish* case for the proposition that there must be some procedural requirement for extensive review upon which to base assumptions:

> The Minister of National Revenue has, after all, assessed. His officials may be presumed to have done their homework. They would have conducted the usual extensive investigations prior to assessing, and heard representations from the taxpayer or its representatives. At that stage the Minister would have formed the so called "assumptions" upon which the assessment presumably is premised.

With respect, the Former Chief's musings are not part of the ratio of that case and go no further than an acknowledgment the Minister does some review.

[16] In another case decided by Former Chief Justice Bowman and upheld at the Federal Court of Appeal, *Imperial Oil*, he concluded the Minister's free to perform audits of a taxpayer during the period in which an appeal is outstanding.

> 32. There is no justification as a matter of common sense or as a matter of statutory interpretation to say that an assessment to which one can object or from which one can appeal must be an assessment based upon an audit by the Minister of National Revenue or in which the Minister assesses in a manner that is inconsistent with the way in which the taxpayer has filed. If Parliament wishes to restrict the sort of assessment to which an objection can be filed or from which an appeal can be taken it is perfectly capable of saying so. It is not appropriate to read words into the statute in order to give it a strained meaning that the plain words do not reasonably bear.
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> …
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> 47. The Attorney General of Canada can deal with the appeals at the same time as the CCRA is proceeding with the audit. The existence of an outstanding appeal does not curtail or limit in any way the Minister's powers under the *Income Tax Act*.

[17] The Federal Court of Appeal, in upholding Associate Chief Justice Bowman's decision stated:

> 7. Third, the Crown argues that permitting objections and appeals to a taxpayer's own filing diminishes the Minister's capacity to conduct audits. There is not basis for this argument. The Minister's right to audit and to reassess within the statutory limitation periods exists regardless of any ongoing objections and appeals. Nor do we accept that the Minister could be prejudiced by a plea of res judicata if an audit adjustment is made after the conclusion of the Tax Court appeal on an issue that could not have been

> before the Tax Court. The Minister's right to reassess within the statutory time limitations cannot be so limited. In addition, the res judicata principle offers built-in safeguards whereby the rule will not apply when justice so requires in special circumstances.

[18] The Appellant suggests I should read the Federal Court of Appeal's comment as limiting the CRA to audit within the statutory period for reassessing, therefore concluding that an assessment that simply extends that time limit is invalid. I find the Federal Court of Appeal's statement does not go that far; it is not made in the context of the situation before me, where there has been a refusal to provide a waiver, all parties being well aware that further investigation is required.

[19] The Appellant also took me to the Federal Court of Appeal decision in *Loewen* where the court stated:

> The basis of any assessment is a matter of historical fact, and does not change. The basis of a reassessment normally includes the facts relating to the increased taxable income, as the Minister perceived those facts when the reassessment was made. It also includes the manner in which the Minister applied the facts to the relevant law when making the reassessment, and any conclusions of law that guided the application of the facts to the law.

Again, a comment from the court as to what normal procedure might be is not a statement of what the law requires.

[20] In the case of *Anchor Pointe*, the Federal Court of Appeal dealt with the fine issue of where the onus lies in the pleading of assumptions arising at the stage of the confirmation of a reassessment. The Federal Court of Appeal did however say:

> 33. I agree with the motions Judge that the appeal is not from the confirmation of the assessment. The appeal is, to use the words of Hugessen J.A., from the product of that assessment: see also *Parsons*, at page 814, where Cattanach J. held that the "assessment by the Minister, which fixes the quantum and tax liability, is that which is the subject of the appeal." That product refers to the amount of the tax owing as initially assessed or determined, and subsequently confirmed. From the perspective of the process itself, the assessment pursuant to sections 152 to 165 is not completed by the Minister until, within the time allotted by the Act, the amount of the tax owing is finally determined, whether by way of reconsideration, variation, vacation or confirmation of the initial assessment: see *Parsons v M.N.R.*, supra, at page 814.

[21] While acknowledging "assessment" can mean both the process and the product, it is the latter which was the subject of the appeal in that case. This addresses the correctness of an assessment, but does not address the validity of an assessment as it was not at issue before that court. The implication that the assessment must be completed within the time allotted by the *Act* neither precludes a protective assessment nor further examination by the CRA after such assessment.

[22] I find that the Federal Court of Appeal's conclusion in *Karda* that a protective assessment is valid where there has been a request for information, none forthcoming and then a refusal of a waiver request, is an acknowledgment that there will be situations, as I indicated in *Karda*, where more time is necessary to investigate and examine a taxpayer's affairs, and if a protective assessment is necessary to do so, then the assessment is valid. None of the cases to which I have been referred draw any distinction between further examination being simply a request for more information or a full blown audit. It does not make a difference.

[23] What I draw from these cases is that, yes, there can be an issue with respect to the validity of an assessment. There is no law, however, to the effect that a protective assessment is invalid if issued for the sole purpose of leaving the door open to conduct or continue an audit. I can find no precedent that this is a procedural unfairness that overrides the clear statement in section 152(8) of the *Act* that:

> An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

[24] Indeed, the law, I find, is clear that some review by the CRA followed by inquiries for more information and a request for a waiver, subsequently refused, is sufficient for a protective assessment to be a valid assessment. And that is exactly what we have here.

[25] It is clear from the Amended Notice of Appeal (paras 36 – 42) the CRA were not sitting idly waiting for the last day to issue a reassessment. They were actively engaged with the Appellant, providing explanations and seeking further information, and finally requesting a waiver. The Appellant refused. There is no basis in law upon which an assessment issued in those circumstances can be found invalid. The Appellant's case based on the impugned paragraphs is, I conclude, hopeless. The test has therefore been met that such provisions should be struck and I do so.

Signed at Ottawa, Canada, this 19th day of September 2013.

"Campbell J. Miller"

C. Miller J.

APPENDIX A

50. On January 25, 2013, the Appellant requested by way of an application under the *Privacy Act* (Canada) ("PA") all documentation in possession of the CRA relating to the Appellant's 2008 taxation year and specifically the audit report.

51. By letter dated January 31, 2013, the CRA confirmed that the Appellant's 2008 personal tax return was still under review by the Audit Division of the CRA and that information and documentation supporting the reassessment would be provided upon completion of CRA's review of the Appellant's 2008 tax return.

52. By letter dated March 12, 2013, the Appellant received a response from the CRA in respect of his request under the PA.

53. The CRA refused to provide the audit report or any other documents supporting the Reassessment on the basis that the disclosure could reasonably be expected to be injurious to the enforcement of any law of Canada or the conduct of lawful investigations including any documents relating to the existence or nature of a particular investigation.

55(a) the Reassessment issued by the Minister arbitrarily and without the completion of an audit is a valid assessment under the Act;

57. The CRA chose to issue the Reassessment without completing an audit, arbitrarily and without support, adding a taxable dividend in the amount of $7,500,000 and denying carrying charges and interest expenses claimed in the amount of $438,626 in computing the Appellant's taxable income for the 2008 taxation year.

58. The CRA cannot reassess a taxpayer based only on hypothesis, without verification of the facts and without completion of its audit.

59. The term "assessment" refers not only to the "procedure by which the tax is assessed", but also to the "product" of this assessment. Thus, to arrive at a "product", the amount established by the assessment, the CRA must first and foremost have completed an audit enabling it to determine the tax assessed.

60. This product, being the amount of tax payable by a taxpayer for a particular taxation year, may only be established from facts that have been duly verified,

are complete, accurate and correct, and are stated honestly and openly to enable the taxpayer to determine what he must prove.

61. Taxpayers must know the basis on which an assessment is based to submit a proper objection.

62. As evidenced by the CRA's response to the Appellant's request under the PA, and by way of letter dated January 31, 2013, the CRA admits that their audit was not complete prior to issuing the Reassessment and is refusing to provide any documents supporting the Reassessment.

63. Moreover, more than six months later, an audit report still cannot be provided to the Appellant by the Minister to support the Reassessment.

64. Accordingly, the Reassessment was not issued in accordance with the requirements of the Act and is therefore not valid.

APPENDIX B

35. On September 8, 2009, the Minister of National Revenue ("the Minister") initially assessed as filed the Appellant's tax liability for his 2008 taxation year.

36. By letter dated June 8, 2012, the Appellant was informed that his personal income tax return for the 2008 taxation year had been selected for audit. Shortly thereafter, the Canada Revenue Agency ("CRA") requested from the Appellant a waiver in respect of the normal reassessment period applicable for the 2008 taxation year.

37. During the following months, the Appellant collaborated with the CRA to provide the available information requested by the CRA.

38. On August 16, 2012, the CRA proposed to reassess the Appellant's tax liability for the 2008 taxation year by adding an amount of $6,000,000 to his income and by denying interest expense in the amount of $438,626. The CRA also proposed to apply penalties pursuant to subsection 163(2) of the Act. The CRA provided no explanation in support of the proposed reassessment.

39. In that same letter, the CRA also suggested that the Appellant provide a waiver in respect of the normal reassessment period applicable for the 2008 taxation year which would allow the Appellant additional time to make representations to the proposed adjustments.

40. The Appellant did not understand the adjustment proposed by the CRA with respect to his 2008 taxation year and requested more information regarding the basis of the proposed reassessment.

41. By letter dated August 24, 2012, the CRA provided an explanation regarding the proposed reassessment. In support of the inclusion in the Appellant's income of an amount of $6,000,000, the CRA referred to a loan of that same amount that purportedly constituted a shareholder benefit for the Appellant or an indirect payment for the benefit of the Appellant, respectively, pursuant to subsections 15(1) and 56(2) of the Act. To deny the interest deduction, the CRA "concluded that no amount of interest was paid or payable in the year 2008 in respect of a legal

obligation to pay interest." The CRA added that they "consider the purported loan to be a sham".

42. Following further representations by the Appellant, the CRA issued a third proposal letter dated August 31, 2012. In that letter, the CRA proposed to deny the interest expense claimed in the amount of $438,626 under paragraph 20(1)(c) of the Act. The CRA continued to propose to include an amount of $6,000,000 in the Appellant's income for the 2008 taxation year but relied for the first time on subsection 84(1) of the Act in support of that adjustment. The CRA also maintained the possibility of applying penalties under subsection 163(2) of the Act. The CRA's entire proposed reassessment is based on the assumption that the Appellant did not receive a "real loan" from Metropac.

43. The normal reassessment period for the Appellant's 2008 taxation year ended on September 8, 2012.

44. By notice of reassessment dated September 7, 2012 (the "Reassessment"), the Minister reassessed the Appellant's tax liability for his 2008 taxation year by adding a taxable dividend in the amount of $7,500,000 and by denying an interest expense in the amount of $438,626 in computing his taxable income.

45. On or before October 1st, 2012, the Appellant received by regular mail a statement of account dated September 21, 2012 from the CRA referring to a 2008 Reassessment dated September 7, 2012.

CITATION:	2013 TCC 293
COURT FILE NO.:	2013-705(IT)G
STYLE OF CAUSE:	PAUL C. GOLINI AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	September 12, 2013
REASONS FOR ORDER BY:	The Honourable Justice Campbell J. Miller
DATE OF ORDER:	September 19, 2013

APPEARANCES:

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Counsel for the Respondent:	Aleksandrs Zemdegs and Marie-Therese Boris

COUNSEL OF RECORD:

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