

[OFFICIAL ENGLISH TRANSLATION]

Date: 20030131
Docket: 1999-4511(IT)G

BETWEEN:

MANUEL JOSÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Terrassement Portugais Inc. (1999-4535(IT)G)
on June 12, 2002, at Québec, Quebec and
last written argument received on November 15, 2002, at Ottawa, Canada

Before: The Honourable Judge Louise Lamarre Proulx

Appearances:

Counsel for the Appellant: Pierre G. Gingras

Counsel for the Respondent: Nathalie Lessard

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1993, 1994 and 1995 taxation years are allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the cost of the Mercedes car, in the amount of \$62,105, should not be included in capital in computing the net worth of the appellant. The other components of the net worth are correct in all other respects. The appellant is also subject to the penalties, except on the amount admitted by counsel for the appellants at the beginning of the hearing.

The whole in accordance with the attached Reasons for Judgment.

The appellant is entitled to half of the costs of a single appeal.

Signed at Ottawa, Canada, this 31st day of January 2003.

"Louise Lamarre Proulx"

J.T.C.C.

[OFFICIAL ENGLISH TRANSLATION]

Date: 20030131
Docket: 1999-4535(IT)G

BETWEEN:

TERRASSEMENT PORTUGAIS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Manuel José (1999-4511(IT)G)
on June 12, 2002, at Québec, Quebec and
last written argument received on November 15, 2002, at Ottawa, Canada

Before: The Honourable Judge Louise Lamarre Proulx

Appearances:

Counsel for the Appellant: Pierre G. Gingras
Counsel for the Respondent: Nathalie Lessard

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1993, 1994 and 1995 taxation years are allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the cost of the Mercedes car, in the amount of \$62,105, should not be included in capital in computing the net worth of the appellant Manuel José. The other components of the net worth are correct in all other respects. The appellant company is also subject to the penalties, except on the amount admitted by counsel for the appellants at the beginning of the hearing.

The whole in accordance with the attached Reasons for Judgment.

The appellant company is entitled to half of the costs of a single appeal.

Signed at Ottawa, Canada, this 31st day of January 2003.

"Louise Lamarre Proulx"

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BETWEEN:

TERRASSEMENT PORTUGAIS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lamarre Proulx, J.T.C.C.

[1] These appeals were heard on common evidence. At issue for both appellants are the taxation years from 1993 to 1995. The assessments were based on the appellant Manuel José's net income that was computed using the net worth method.

[2] In making the reassessments concerning the appellant company, the Minister of National Revenue ("the Minister") relied on the following assumptions of fact, set out in paragraph 4 of the Amended Reply to the Notice of Appeal:

[TRANSLATION]

- (a) the appellant company's fiscal year ends on December 31 of each year;
- (b) the voting shares in the appellant company are held by Manuel José and by the corporation Gestion Manuel José Ltée, in which all the shares are held by Manuel José;
- (c) Manuel José is the president of the appellant company;
- (d) the appellant company operates a commercial and residential earthmoving business;
- (e) the residential work performed by the appellant company is often paid for in cash;
- (f) Manuel José's only sources of income are the appellant company and Gestion Manuel José Inc.;
- (g) the income of Gestion Manuel José Inc. is derived solely from the management fees that the appellant company pays it;
- (h) Manuel José declared total income of \$11,360 in 1993; \$18,000 in 1994; and \$16,000 in 1995;
- (i) Manuel José does not deposit into his bank accounts the income (salaries) declared and derived from his corporations; he reinvests nearly all this income in the appellant company;
- (j) the appellant company declared net income for tax purposes in the following amounts:

1993	\$123,593
1994	\$ 0
1995	\$ 0

- (k) a calculation of the variation in net worth indicated additional undeclared income for Manuel José in the following amounts:

1993	\$ 9,190
1994	\$63,618
1995	\$ 6,057

- (l) Appendixes I, II and III, showing the statement of net worth and the statement of variation in net worth, as calculated by the Minister, are attached to this Reply and form an integral part thereof as if recited at length herein;
- (m) the income of Manuel José disclosed by the calculation of the variation in net worth is income earned by the appellant company that it did not declare on its income tax returns for the 1993, 1994 and 1995 taxation years and that Manuel José appropriated;

Mercedes E300

- (n) in calculating the variation in net worth for Manuel José, the Minister asked Manuel José to submit a personal balance sheet for the taxation years at issue; the balance sheet submitted by Manuel José made no reference at all to a Mercedes E300 car;
- (o) moreover, the Minister discovered that, on November 18, 1994, Manuel José purchased a 1995 Mercedes E300 car from a car dealer for a total of \$62,105, of which \$59,605 was paid in cash and \$2,500 was paid by credit card;
- (p) the car was registered with the Société d'assurance automobile du Québec (S.A.A.Q.) in Manuel José's name until August 16, 1996, and was licensed as YGX 258;
- (q) the S.A.A.Q. records indicate that this car was "scrapped" on August 16, 1996;
- (r) from March 25, 1995, to March 25, 1996, Manuel José insured the Mercedes E300 with "General Accident, Compagnie d'assurance du Canada"; this insurance covered all risks when the car was being driven by Manuel José;
- (s) the Mercedes E300 was shipped [to] Portugal in December 1995;
- (t) each year, Manuel José would live in Portugal from December to March;
- (u) Manuel José was the owner of the Mercedes E300 during the 1994, 1995 and 1996 taxation years and purchased this car with income of the appellant company that he appropriated;

Net worth

- (v) the variation in net worth, as calculated by the Minister, takes into account only assets owned by Manuel José, as well as personal expenses (such as food, clothing, transportation, recreation and personal care), which had to be based on an average amount set by Statistics Canada, and of which the respective totals for the taxation years at issue are as follows:

1993	\$8,540
1994	\$8,654
1995	\$8,844

- (w) the above-computed personal expenses do not even include the additional expenses that Manuel José must incur for his annual trips to Portugal; nor were these expenses taken into account in calculating the variation in net worth for the taxation years at issue;

Disallowed expense for professional fees

- (x) for the 1995 taxation year, account 42140 in the appellant company's general ledger includes expenses of \$11,838.70 paid by the appellant company to DesRivières, Vermette, Bérubé and claimed by the appellant company in computing its taxable income for that year;
- (y) this claim refers to invoices 7777 to 7790 and includes an amount of \$1,491, before G.S.T. and Q.S.T., paid for a legal opinion on whether Manuel José should crystallize the capital gain realized on his shares;

Penalties

- (aa) during a 1991 audit, reassessments were made concerning the appellant company for undeclared income in the following amounts, which had been erroneously identified in its accounting records as advances received:

1986	\$6,000
1988	\$7,100

- (bb) during a 1994 audit, reassessments were made concerning the appellant company for undeclared income in the following amounts, which had been deposited directly into Manuel José's bank account:

April 1991	\$16,000
December 1991	\$ 3,770

- (cc) in filing its income tax returns, the appellant company knowingly, or at least under circumstances amounting to gross negligence, failed to declare income in the following amounts:

1993	\$ 9,190
1994	\$63,618
1995	\$ 6,057

- (dd) by failing to declare its income, the appellant company eluded payment of income tax in the following amounts:

1993	\$1,180
1994	\$8,168
1995	\$ 792

[3] In the Amended Reply to the Notice of Appeal concerning the appellant Manuel José, the assumptions of fact differ from those concerning the appellant company only in subparagraphs 17(y), 17(z) and 17(aa), which read as follows:

[TRANSLATION]

Penalties

- (y) during a 1994 audit, reassessments were made concerning the appellant Manuel José, adding the following amounts to his income as undeclared business income from "Terrassement Portugais Inc." that he appropriated:

1990	\$16,000
1991	\$ 3,770

- (z) in filing his income tax returns, the appellant Manuel José knowingly, or at least under circumstances amounting to gross negligence, failed to declare income in the following amounts:

1993	\$ 9,190
1994	\$63,618
1995	\$ 6,057

- (aa) by failing to declare that income, the appellant Manuel José eluded payment of income tax in the following amounts:

1993	\$ 1,352
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1994	\$14,571
1995	\$ 891

[4] The Notice of Appeal by the appellant company simply denies that there was income in addition to the income declared.

[5] The Notice of Appeal by the appellant Manuel José is much more detailed, since the variation in declared income using the net worth method was calculated with respect to the appellant Manuel José. I quote paragraph 3 of the Notice of Appeal:

- (a) the assessments were made on the basis of a statement of assumed net worth of the APPELLANT for the 1993, 1994 and 1995 taxation years, as well as a statement of net worth and a statement of variation in net worth for the 1992 and 1996 taxation years;
- (b) those statements of net worth and statements of variation in net worth are inaccurate and do not reflect the reality of the APPELLANT's actual lifestyle, assets and expenses;

MERCEDES E-300 CAR

- (c) as well, for the 1994 taxation year in particular, an amount of \$63,618 was added to the APPELLANT's income; of this amount, \$62,105 allegedly corresponds to the amount the Department claims that the APPELLANT withdrew from Terrassement Portugais inc., of which he is the sole shareholder, in order to purchase a Mercedes E300 car;
- (d) in fact, this amount was not withdrawn from Terrassement Portugais inc. and the APPELLANT did not purchase this car for himself;
- (e) to the contrary, this car was purchased in Canada by the APPELLANT acting simply as an agent of the actual purchaser and owner of the car, Fernando Dos Santos José, who lives in Pombal, Portugal;
- (f) various documents establishing this fact were submitted to the assessing officer, who did not accept them and refused to believe the APPELLANT's version, without requiring additional evidence that might have been considered necessary, where relevant;

- (g) the APPELLANT filed with the assessing officer original Portuguese statements and official documents sworn in Portugal, and a translation thereof into French, including the following:
 - (i) a February 18, 1999, statement by the owner Fernando Dos Santos José that this car was fully owned by him and was imported for him from Canada by the APPELLANT as an agent;
 - (ii) a February 15, 1999, statement by the said Fernando Dos Santos José that the said car was paid for by a bank transfer, of which the number was duly identified, and that he himself was the owner of the car;
 - (iii) proof of registration (gray card), issued by the Republic of Portugal, of the said car in the name of the said owner;
 - (iv) proof of insurance of the said car by Metropole Seguros in the name of the said Fernando Dos Santos José;
 - (v) February 25, 1994, proof of exchange of escudos and proof of purchase of \$65,000 in Canadian banknotes by the said Fernando Dos Santos José so that this money could be remitted to the APPELLANT and the said vehicle purchased;
- (h) in fact, for a Portuguese citizen the cost of such a car if purchased in Portugal is nearly double the cost of the car if purchased in Canada, and this was why the transaction was carried out for the actual owner;
- (i) however, in order to benefit [*sic*] from the customs duty on entry into Portugal, the car must have been used for at least seven months, which explains why the car remained in the APPELLANT's possession for a lengthy period;
- (j) the APPELLANT merely acted as an agent and a broker to be of service to this person;
- (k) the APPELLANT offered to produce other evidence required by the assessing officer and is still prepared to provide this evidence;
- (l) the APPELLANT also intends to produce new documents as evidence in this regard;

- (m) the assessing officer did not contest the legality of the documents that were produced;

NET WORTH

- (n) as well, for the 1993 taxation year, in obtaining a variation of \$9,190.40 in net worth, the assessing officer indicated total income of \$20,550.40, whereas the total declared income was only \$11,360.00;
- (o) in addition, the APPELLANT received Notices of Reassessment for the 1990 and 1991 taxation years; he was assessed as having received \$3,770.00 in income from Terrassement Portugais inc. and having deposited that income into his personal bank account for the 1990 taxation year; and he was assessed as having deposited into his personal bank account an amount of \$16,000.00, also derived from Terrassement Portugais inc., for the 1990 taxation year;
- (p) therefore, those two amounts totalling \$19,770.00 should have been considered the starting point of the net worth for the 1992 taxation year and should have been carried forward to 1993;
- (q) as a result, even if it were admitted that the total income computed using the net worth method is accurately recorded for the 1993, 1994 and 1995 taxation years, which is not the case, even under these circumstances, the variation added for undeclared income would be inaccurate because the APPELLANT's net worth was greater at the beginning of the 1993 fiscal year;
- (r) the amount of \$19,770.00 must be taken into account for the 1994 and 1995 taxation years;

[6] At the beginning of the hearing, counsel for the appellants told the Court that the appellant company was no longer claiming the \$1,491 deduction for the 1995 taxation year and that, as a result, \$1,595 should be added to the income of the appellant Manuel José for the 1995 taxation year. That claim is stated in subparagraphs 4(x) and 4(y) of the Reply, quoted in paragraph [2] of these Reasons. According to counsel for the appellants, that claim was an error of interpretation.

[7] Counsel for the appellants has strongly contested the inclusion of the amount for the Mercedes in the income of the appellant Manuel José. He has also contested the amount of personal expenses included in the net worth as well as the assessment of the penalties.

Testimony by the appellant Manuel José

[8] The appellant Manuel José stated that he was born in Portugal and has lived in Canada since 1976. He was the first one to come to Canada. He subsequently brought to Canada a sister and two brothers, including his brother Joachim. Joachim, who was engaged when he came to Canada, married a number of years later and brought his wife to Canada. Joachim now has two children and owns his own house. He works for the appellant company. At present the appellant Manuel José is living at Joachim's house. Although Manuel José lived initially with his sister, she returned to Portugal.

[9] Manuel José is single. He stated that he pays his brother neither room nor board. Since he is single, he is part of the family and, according to the traditions of his home country, is not required to pay anything. His only expenses are for clothing, the barber, and a few restaurant meals. He neither smokes nor drinks.

[10] Manuel José is a landscaper. He has held all the shares in the appellant company since 1982. The appellant company does landscaping work and also civil engineering work such as parks, sidewalks, sewers and aqueducts. According to the financial statements adduced as Exhibit I-2, Tabs 4 to 6, gross contracting income was \$5,056,193; \$6,029,733; \$3,255,893; and \$3,478,195 respectively for the taxation years from 1992 to 1995. The contracting, administration and financial costs meant that before-tax income was \$221,404, \$135,639, \$32,597 and \$22,837 respectively for the taxation years from 1992 to 1995. As noted in the Reply, the appellant Manuel José admitted that he reinvests the profits in the appellant company.

[11] The business can have between 50 and 60 employees. It has a comptroller who is responsible for the payroll, invoices and reports. It also has a secretary to answer the telephone. It has estimators to prepare the bids, although Manuel José reviews all the bids.

[12] The appellant Manuel José described a working day during the period from April to December as follows. He gets up around 5:30 a.m. and goes to bed around 11:00 p.m. every day of the week. He works on the sites until dark. He then makes preparations for the following day and looks after administrative matters at the office of the appellant company. In March, he works between 10 and 12 hours per day. He leaves Canada around December 10 or 15 and returns around the end of February.

[13] Manuel José eats at the office. His sister-in-law brings him a snack at noon. She does the same for her husband and son, when the son works at the appellant company during his vacations. In the evening, the appellant eats at the house. His sister-in-law also works for the appellant company part-time.

[14] Manuel José stated that his only assets are the shares in the appellant company and a Corvette purchased in 1991. At the time of the hearing, the Corvette had 28,000 kilometres on the odometer.

[15] Manuel José has another brother living in Canada, Fernando. Fernando has his own landscaping business, which does only residential work.

[16] In Portugal, Manuel José lives at the house of his mother, Joachina. He helps her with daily living. She is 86 years old. His father died 11 years ago.

[17] When the other brothers of the appellant Manuel José go to Portugal, they also live at their mother's house, but for shorter periods of time, between two and three weeks, because they have school-age children.

[18] Manuel José does not pay himself regularly. Occasionally he cashes \$3,000 or \$4,000. When that money is spent, he takes out some more money. Those payments are recorded in the accounting records. For the 1994 and 1995 taxation years, Statements of Remuneration Paid were issued in the amounts of \$18,000 and \$16,800 respectively (Exhibit I-2, Tabs 2 and 3).

[19] The appellant Manuel José referred to Exhibit I-1, Tab 1. At this Tab is the statement of personal expenses, as estimated by Manuel José, in the amounts of \$2,580, \$2,630 and \$2,765 respectively for the 1993, 1994 and 1995 taxation years. Manuel José stated that he still agreed with these figures, but he indicated that the cost of a ticket to Portugal is approximately \$750 or \$850.

[20] Exhibit A-2 contains certain documents; counsel for the respondent has contested the adducing of these documents, that is, the documents adduced at Tabs 4 to 7, on the ground that they are a written statement by a witness who is not present and cannot be cross-examined. She has also objected to the documents adduced in the appendixes.

[21] Exhibit A-3 is a contract dated November 11, 1994, for the purchase of a 1995 Mercedes car. The purchaser was the appellant Manuel José. The car was purchased in Montréal. According to the appellant, a diesel model was available only in

Montréal although, he said, the garage had to have the car delivered from Vancouver. Payment for the car was made in cash.

[22] Manuel José stated that he purchased that car for his cousin Fernando Santos José, who lives in Pombal, Portugal. The cousin is a construction contractor. He has never lived in Canada.

[23] The cousin was looking for a Mercedes car and asked the appellant Manuel José to check the prices in Canada for him. According to the cousin, the price in Canada would be about half the price in Portugal. The cousin asked Manuel José to purchase a Mercedes car for him and to ship it over to him. Manuel José stated that he did so in order to do a favour for his cousin, to whom he is very close.

[24] The appellant arranged to have the car shipped to Portugal by ocean container at the end of 1994. He also insured the car during shipping.

[25] Exhibit B-1-A is a December 16, 1994, Portuguese customs document. It identifies the appellant Manuel José as the owner. In Quebec, the car was registered in the name of the appellant Manuel José.

[26] When the car arrived in Portugal, the appellant Manuel José and his cousin realized that, in order to be exempt from customs duty, the car should have been in the country of origin for at least six or seven months. They decided to ship the car back to Canada. The cost of each shipment was between \$2,000 and \$2,300.

[27] Exhibit B-1-B is a document establishing the second shipment of the car to Portugal, on November 22, 1995. Exhibit B-1-D is a December 18, 1995, Portuguese customs document indicating the arrival of the Mercedes.

[28] The appellant Manuel José stated that in February 1994 his cousin paid him \$65,000 in Canadian banknotes, which he brought back to Canada and with which he purchased the car. The banknotes were in denominations of \$100 and \$1,000. That transaction took place in the village of Lagoa das Ceiras, in the Pombal area.

[29] Manuel José referred to Exhibit A-2, Tab 8. Counsel for the respondent objected to the adducing of this document because the person who wrote it was not available for cross-examination. In fact, the document is not signed, but neither counsel noted this fact. This document is a certificate from Banco Mello dated February 25, 1994, concerning the purchase of foreign currency. This document has

been on file with Revenue Canada since 1998. However, counsel for the respondent stated that it has been contested since it was filed with Revenue Canada.

[30] This document was apparently given to Manuel José by his cousin in 1998, the year following the first meetings with the auditor in December 1997. The cousin apparently found this document among his papers.

[31] Exhibit B-1-E is the translation of a document, itself not appended, by the cousin of the appellant Manuel José concerning ownership of the Mercedes. According to this document, this ownership was established on November 21, 1997.

[32] At Tab 7 of Exhibit A-2 are two insurance policies on the car, issued respectively on December 5, 1997, and November 28, 1998. The owner's name is Fernando Santos José.

[33] Exhibit B-1-F is a June 30, 1996, notice of payment of registration to the Société de l'assurance automobile du Québec ("the SAAQ") concerning two motor vehicles: a 1990 Corvette and a 1995 Mercedes. Exhibit B-1-G, dated August 16, 1996, indicates that the Mercedes was scrapped.

[34] Exhibit B-2-B is a bank account of the appellant Manuel José in Portugal, at the Pinto & Sotto Mayor bank. This account is one in which Mr. José's mother and one of his sisters, Lucinda, are authorized to make transactions. This account is used to provide for the needs of the family, including the mother. The sisters live in a house near their mother's house.

[35] This document is a translation. The original was adduced as Exhibit B-2-B-1. The currency is escudos but a rough conversion indicates that the initial amount is approximately \$1,500. The appellant Manuel José stated that he had no other bank accounts in Portugal.

Cross-examination

[36] Manuel José holds shares in the appellant company personally and through a management corporation, Gestion Manuel José. The management corporation employs the comptroller and the secretary. It administers the appellant company as well as Parterre Portugais, a corporation belonging to the brother of the appellant Manuel José.

[37] Manuel José began working for the appellant company 25 years ago as an employee. The owner then returned to Portugal to live. It was at that time that Manuel José purchased the business with one Mr. Ferrera. In 1989, he bought out Mr. Ferrera's shares for \$170,000, thus becoming the sole shareholder.

[38] According to Manuel José, the Banco Mello referred to in Exhibit A-2, Tab 8 no longer exists. According to counsel for the respondent, it apparently became the Banco Atlantico. Mr. José was not aware of that fact.

[39] The appellant stated that he did not recall the purchase price of the Corvette. Counsel for the respondent showed him the purchase contract, indicating a price of \$43,912 and that \$28,912.80 had been paid in cash.

[40] In terms of recreation, Manuel José practises skeet shooting. He also likes to hunt small game in the Thetford Mines and Beauce areas. He occasionally goes to Montréal to visit friends and go to auctions.

Testimony by Marie-Claude Poitras

[41] Ms. Poitras is an auditor with the Canada Customs and Revenue Agency ("the Agency"). Her first meeting was held on September 8, 1997, but the documents were not the right ones. They had to wait until September 30 to obtain the information from the general journal.

[42] Ms. Poitras was not initially informed of the existence of a second car, the Mercedes or that this car was shipped to Portugal twice. She learned about the Mercedes from the SAAQ and about the two shipments from the insurers.

[43] Manuel José told Ms. Poitras that he did not tell her about the Mercedes because it belonged to his multimillionaire cousin. She asked to see the cousin's bank account showing the receipts that needed to total \$65,000. She wanted to make sure that the money did indeed come from the cousin and not from Manuel José.

[44] Ms. Poitras stated that there was no tax treaty between Canada and Portugal and that the CCRA was unable to obtain the relevant bank figures.

[45] In Ms. Poitras' opinion, the document adduced as Exhibit A-2, Tab 8 is nothing more than a currency conversion. She did not know where the money came from nor did she know Fernando Santos José, the cousin.

[46] Ms. Poitras also stated that, in the previous taxation years, the appellant was assessed using the net worth method on the basis of the year-end balances in his bank accounts and that, in subsequent taxation years, he no longer made deposits into his bank accounts.

Analysis

[47] In adding \$9,190 in income for the 1993 taxation year and \$6,057 for the 1995 taxation year, the total income of the appellant Manuel José is \$20,550 and \$23,652 respectively for those taxation years (Exhibit I-2, Tabs 12 and 14). In adding \$63,618 in income for the 1994 taxation year, his income is \$81,618 (Exhibit I-2, Tab 13). For the 1986 to 1991 taxation years, the income computed using the net worth method was approximately \$20,000 (Exhibit I-5).

[48] Concerning the 1994 taxation year, one may wonder whether it is plausible that the appellant's income increased so significantly in a single year. The same question came up in *Badaan v. Canada*, [2000] T.C.J. No. 701 (Q.L.). In that case, for the 1994 taxation year, there was an increase of \$169,382 in undeclared income, in comparison with an average increase of \$33,962.66 for the 1992 and 1993 taxation years. In 1994, the taxpayer, who wanted to dispose of his convenience store and create another source of income for himself, had purchased securities for a considerable amount of money, and this greatly increased the value of his capital.

[49] I concluded that the taxpayer's explanation that he purchased the securities with the proceeds of the sale of his property in Israel and the savings he had accumulated over the years was more plausible than the respondent's position, unsupported by any evidence, that this substantial income was suddenly generated that year from the sale of the convenience store.

[50] In the present case, the explanation provided by Manuel José is that the Mercedes car was purchased by his cousin with his cousin's money. The respondent has claimed that the appellant is the actual owner. If that were the case, Manuel José could have explained that the car was purchased with his own savings. That was not the approach that was followed.

[51] Not everything about the ownership of this car is as clear as one would wish. The first conundrum is the payment in cash made to the appellant Manuel José by his cousin in Portugal. It is odd that Manuel José, who otherwise shows normal prudence, would have carried \$65,000 in cash on him on the plane. As well, he

insured the car for both shipments. Another conundrum is who paid for the shipments of the car. There is a disconcerting lack of evidence on this point.

[52] As I was about to believe that the appellant Manuel José was indeed the owner of the car, I read and reread his testimony in order to detect contradictions or pieces of testimony proving that he was its actual owner. I was unable to find a single passage in which the appellant Manuel José acted as if he owned the car. His cousin made the decisions. For example, the decision to ship the car back to Canada was made by the cousin (page 113 of the transcript). The appellant's version of the facts never wavered. No contradictions can be detected in his testimony. It is the same position he consistently maintained with the auditor. It was the auditor who discovered the existence of the car. When questioned by the auditor on this point, the appellant spontaneously provided that explanation and has never altered it since.

[53] Nor do I have any evidence from the respondent that in 1994 the appellant company was able to generate a hidden profit of the magnitude alleged.

[54] Concerning the personal expenses for the 1993 taxation year, the appellant Manuel José estimated those expenses at \$2,580; taking into account conservative Statistics Canada figures and the fact that the appellant Manuel José paid nothing for accommodation, the auditor estimated those expenses at \$8,904. Concerning personal expenses for the 1994 taxation year, the appellant Manuel José estimated those expenses at \$2,580; the auditor estimated them at \$8,654. Concerning personal expenses for the 1995 taxation year, the appellant Manuel José estimated those expenses at \$2,765; the auditor estimated them at \$8,844. The statement of personal expenses, as estimated by Manuel José, is found in Exhibit I-1, Tab 1; the statement of those expenses as estimated by the auditor is found in Exhibit I-1, Tab 3.

[55] The statement of personal expenses does not take into account the expenses of Manuel José for trips to Portugal.

[56] I consider that the amount of personal expenses is at least the amount estimated by the auditor.

[57] Concerning the penalties, I consider that they were correctly assessed. The appellant Manuel José knowingly took steps to conceal his actual income. For example, he does not deposit his money into bank accounts or, if he does so, he does not disclose those bank accounts to the Minister. In argument, counsel for the appellants stated that, in computing the net worth, the respondent did not take into

account the 1990 and 1991 taxation years. The Minister took into account the 1992 taxation year, and this is sufficient.

[58] The appeals are allowed, and the assessments are referred back to the Minister for reassessment on the basis that the cost of the Mercedes car, in the amount of \$62,105, should not be included in capital in computing the net worth of the appellant Manuel José. The other components of the net worth are correct. The appellant is also subject to the penalties, except on the amount admitted by counsel for the appellants at the beginning of the hearing.

[59] The appellants are entitled to half the costs.

Signed at Ottawa, Canada, this 31st day of January 2003.

"Louise Lamarre Proulx"

J.T.C.C.