Docket: 2007-1342(IT)I

BETWEEN:

XIN WANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 22 and April 29, 2008, at Toronto, Ontario

Before: The Honourable Justice T. E. Margeson

Appearances:

Agent for the Appellant:	Sean Hu
Counsel for the Respondent:	Samantha Hurst

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the Appellant's 2002 and 2003 taxation years are allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Schedules III, V and VI of the Reply will be amended as follows:

Schedule III

- discrepancy per net worth, 2002, changed from $39,595.72 to $37,137.91.

Schedule V

- unreported business revenue, 2002, changed from $36,063.22 to $33,605.41
- unreported business income per net worth in 2002, changed from $33,702.33 to $31,244.46

Schedule VI

- unreported business income per net worth, 2002-12-31, changed from $33,702 to $31,244

Total adjustment – 2002-12-31, changed from $37,234 to $34,786.

In all other respects the appeals are dismissed.

Signed at Vancouver, British Columbia, this 19th day of June 2008.

"T. E. Margeson"

Margeson J.

Citation: 2008TCC308
Date: 20080619
Docket: 2007-1342(IT)I

BETWEEN:

XIN WANG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Margeson J.

[1] The taxpayer initially appealed from assessments for the taxation years 2001, 2002 and 2003.

[2] At the beginning of the trial the Respondent moved for dismissal of the appeal for the 2001 taxation year as no Notice of Objection was filed for that year.

[3] The evidence disclosed that no Notice of Appeal was filed for the 2001 taxation year and the motion was allowed and the appeal from the assessment for the 2001 taxation year was dismissed by my Order dated March 7, 2008.

[4] The Minister of National Revenue reassessed the Appellant for the taxation years 2002 and 2003 under ss. 152(7) of the *Income Tax Act* ("*Act*") by Notices of Reassessment dated January 10, 2006 and increased the Appellant's net business income for those years by the amounts of $37,234 and $34,055 respectively by using the net worth method of assessment and imposed penalties of $3,730.93 and $1,661.92 respectively, pursuant to subsection 163(2) of the *Act* in respect of $33,702 for the 2002 taxation year and $20,878 for the 2003 taxation year, which

amounts were part of the understated business income for those years. This appeal was filed from these reassessments.

Evidence

[5] The Appellant testified that he was an immigrant from mainland China in January of 1997. He took no business courses and had no knowledge of taxation matters. His income tax returns were completed by his accountant. According to his accountant, he had to keep daily records and had the information in Court.

[6] With respect to the auditor's claim that in 2002 he overstated his cost of goods sold by $4,154, he said that he believed that those amounts were spent on cleaning and advertising.

[7] He did not agree that only five percent of his automobile expenses should be allotted to business and 95% to personal. Personal use should be 20% and 80% should be business use.

[8] He purchased the business but "it was no good". They survived by living simply and borrowing from his parents-in-law. He did not agree that he would spend $6,000 per year on groceries. He said that they ate food that was left over from the restaurant and they went to the church or the temple to obtain free meals.

[9] He disputed the Minister's position that he would spend $1,200 a year on clothing, stating that they used clothing from China. They spent nothing on health care, nothing on personal care, nothing on recreation and nothing on sundry material. He read the newspaper at the market. They spent no money on alcohol, tobacco or gifts and entertainment.

[10] They sold the business in 2003 for $44,000. They bought it for $70,000.

[11] They received cash from China from his parents-in-law who brought $85,000. They borrowed $40,000 from them over a three year period.

[12] He said that he never provided any records to the Minister before he received the letter from the auditor dated July 23, 2004 and entered as Exhibit A-1, except his income tax returns.

[13] He was not told why the audit was extended to 2003.

[14] In cross-examination he said that he could speak a little English and had exposure to documents and signs relating to the restaurant.

[15] He explained that the only reason for the difference is the money that the Minister calculated that he had available for personal use and the amount reported in his income tax returns that was money that he received from his family.

[16] He had no money from gambling. He received money from his parents-in-law but had no receipts to show that. He claimed that in 2003 they received $20,000 from them. He agreed that the auditor allowed this amount. They did not receive much from them in 2002. Then he said that his wife went to mainland China in 2002 and brought back $10,000 in cash.

[17] He then concluded that for the years 2002 and 2003 he received $35,000 from this source.

[18] He identified a letter from a Mr. Qingyu Zeng, Exhibit R-2, located in Exhibit R-1, Tab 23, which he showed to the auditor alleging that he gave the Appellant $7,500 in August of 2002. This was contrary to what he said in Court that his wife brought back $10,000 from China in 2002.

[19] His only explanation was that if his wife’s parents did not want them to use it, they would not. He had no documents referable to the $7,500. Mr. Zeng was not available to testify because he went to China. He did not tell him before he departed that he would require him to testify.

[20] He identified Exhibit R-3, located in Exhibit R-1, Tab 24, as a letter purportedly written by Fei Sun that he gave to the auditor. This letter said that he provided US$15,000 to the Appellant from the Appellant’s parents when he came to Canada in 2002. He said that he did receive it but if his wife’s family disagreed with the Appellant and his family using it, that they would not touch it. They used approximately $30,000 during 2002 and 2003.

[21] At the audit stage he had said that they received $7,500 and US$15,000 in 2002. Then he said that they brought in $80,000 to Canada and used one-half of it over three years.

[22] Mr. Sun landed in Vancouver and moved directly to Toronto and brought the $15,000 in cash. He did not deposit it into the bank.

[23] During the audit period he asked Mr. Sun to draw up this letter. It said “helped Mr. Wang bring $15,000 from his family in China”.

[24] He was referred to Exhibit R-2, located in Exhibit R-1, Tab 23, a letter purportedly written by Mr. Qingyu Zeng and said that he did not think that Mr. Sun wrote that letter (even though they looked remarkably similar). He contacted him but he did not answer his phone. He did not know whether the letter was written by Mr. Zeng or whether he had someone else write it but it was his signature.

[25] He was not asked to fill in the personal expenditure worksheet, Tab 8, even though it was sent to his accountant.

[26] He recognized the personal expenditure worksheet, R-5, located at Exhibit R-1, Tab 10, but did not fill it out. He discussed its contents with his wife. They put in the figures but he believed that they over-estimated some of them.

[27] According to him they bought no diapers or baby clothes. They were given to them by friends. They bought no clothing for themselves. He did not put in the cost of the car lease of $600+. Other than that the figures were accurate. There were no expenses for health care.

[28] They only spent $20 per month on personal care. His mother-in-law brought all of the necessities for the baby over from China. He admitted to consuming alcohol but he said that his friends provided it. He provided no gifts for anyone even his mother-in-law. She refused their kindness.

[29] He denied that his personal expenditure statement was a fabrication even though the amounts were low. He admitted that his personal expenditure sheet showed a total of $19,412 for 2002 while his income tax return showed net income of only $8,133.48.

[30] He did not recall when he paid a liquor licence fee or municipal licence fee for the restaurant, or if he did. When he paid it he did not claim any expenses in his expense statement but he tried to when he was audited. He admitted that there was a “minor mistake”, as well he did not claim accountant’s fees.

[31] He could not explain the discrepancy between his income tax return showing leasehold of $64,750 and the purchase information which showed the value of the leasehold at $30,000.

[32] He admitted to making three mistakes in the return filed which he could not explain.

[33] He said that they had two vehicles and that about 80% of the use was for deliveries for the restaurant. He signed a lease for the Dodge van and had to pay $250 per month for the lease. He did not know if he declared his salary on the lease contract and did not bring it with him today. It had a value of over $20,000.

[34] His mother-in-law had to stay home and look after his child so she could not come to Court. He was not calling any other witnesses to corroborate his evidence.

[35] His wife travelled to China in 2002 and 2003 and he travelled there in 2003. His mother-in-law paid for his wife's trip in 2002 and he paid in 2003. After they sold the restaurant he paid for his own trip. He claimed that a return trip to China was around $1,000.

[36] In re-direct he said that the purpose in introducing the two letters into evidence was to show that the total amount of money brought over from China was around $85,000.

[37] His agent agreed that there was no objection filed in 2002 and he was abandoning the appeal for that year. The Court dismissed the appeal for that year.

[38] The Respondent called Mr. Coskun Cetinkaya as a witness. In 2003 and 2004 he was an auditor at Canada Revenue Agency ("CRA"). He had a bachelor's degree in management and had received special training at CRA. He was assigned the Appellant's file by his manager in July 2004.

[39] He sent a letter to the Appellant and was contacted by his accountant, Mr. Chu. He identified his letter to the Appellant as Exhibit R-2, located in Exhibit R-1, Tab 4. After the initial interview he received bank statements, credit card statements and the purchase and sale documents for his business. He prepared Exhibit R-1, Tab 5 after his interview with the Appellant.

[40] He reviewed the screener's comments that there was low income reported and therefore they had to verify the source of income. Several years are considered and several factors.

[41] He performed a bank analysis and found that the bank deposits did not match the reported income. The taxpayer said that he was not depositing all of this

income to his bank account. He did a “rough source of income analysis”, a property search and a motor vehicle search. “The rough source of income” study showed that expenses were higher than income reported. He needed to have other sources of income. He also concluded that this was a cash business. He discussed it with his manager and they decided to do a “net worth assessment”.

[42] He considered all of the documents that were provided to him and had discussions with the taxpayer.

[43] He used Statistics Canada figures for a family of three. He believed that those numbers were a little conservative for Toronto. He took into account the fact that the baby was out of the city for a time and that her mother-in-law was living with them part of the time.

[44] After he discovered the discrepancies he did a proposal letter, Exhibit R-9, located in Exhibit R-1, Tab 12. His initial conclusions were that there was a total increase of taxable income of $4,936 in 2001; $41,601 in 2002 and $10,915 in 2003. He then sat down with the taxpayer and his representative and considered their representations. As a result he made some adjustments. He found that the 2001 year was not material as the amount was not significant.

[45] He identified his letter as Exhibit R-10, located in Exhibit R-1, Tab 13, as his final conclusions to the assessment. He found that the expenses claimed were not substantiated by the receipts and documents that he reviewed. There was a discrepancy of $4,154.

[46] In the interviews, though the taxpayer had not claimed motor vehicle expenses he estimated that 20% should be allowed. He believed that 5% was reasonable, that is what he allowed. He was unaware of the fact that they had two cars. This may have made personal expenses higher but it would not affect the income.

[47] He found a $30,000 discrepancy in regard to the loss claimed by the taxpayer on the sale of the business.

[48] The Appellant explained to the auditor that the difference in his net worth was attributable to cash gifts received from family members in China. This had not been brought up at the initial interview. At first he said that he borrowed money from his mother-in-law and then said that his friends had brought money also. This was after they had completed their findings.

[49] He referred to Exhibit R2 and R-3, located in Exhibit R-1, Tabs 23 and 24, which were letters referencing monies brought to the Appellant from his family in China in 2002. He said that they provided cash. This witness did not believe him. He did allow an exemption for monies brought by relatives where they showed bank records matching their arrival dates as seen in Exhibit R-1, Tab 22 for $23,000. There was a bank book in the Appellant's wife's name showing a deposit of US$15,000, so he allowed this amount (CAN$23,000+) to be deducted from the net worth statement. He allowed no other amounts.

[50] He prepared an audit report summarizing his findings as Exhibit R-14, located in Exhibit R-1, Tab 25. He advised the taxpayer of the adjustments.

[51] With respect to penalties, he indicated that where there is unreported income they assess penalties taking into account the amount of the increase in business income (materiality) (ratio of unreported income to total income). Knowledge is also a factor. He was aware of the information provided to the Minister. They also considered this initially but the Appellant never brought up the fact that friends had brought money from China and there was no documentation to support this allegation. Also, it was important that the taxpayer was reporting very low income. They decided that the taxpayer could not live on the money he reported. There was a large increment after the increase.

[52] In cross-examination he identified Exhibit A-1 which was the letter sent to the taxpayer about the proposed audit. He confirmed that before he wrote the letter he had no records to review. He did consider that the taxpayer had cash business, low business income, low taxable income. He also considered the screener's comments. Any one of the three is enough to do a net worth assessment. He also had the approval of his manager.

[53] He identified Exhibit A-2, the Personal Expenditures Worksheet for the Appellant (which was Schedule IV to the Reply). His figures were based on Statistics Canada figures. The taxpayer may have explanations as to why these figures do not apply to him. He believed that most of the figures applied to the taxpayer. He did take into account information provided by the taxpayer which affected his use of the Statistics Canada figures. He also considered that the taxpayer was eating the restaurant food and that had to be taken into account.

[54] They always use the taxpayer's figures if they are close to the Statistics Canada figures, but if there is a wide discrepancy they use the Statistics Canada figures.

[55] He agreed that the amount of the assessment should be reduced by $2,447, since it was added twice in personal expenditures for the 2002 taxation year.

[56] He was not satisfied as to the cost of goods sold. It was not proper to include newspapers in the cost of goods sold as this was not a direct cost. No claim was made initially for the cost of the newspapers. The terminal loss claim in 2007 for good will was disallowed.

[57] He admitted that there were some books and records submitted but they were insufficient so he still used the net worth method of assessment. He referred to his reasons given in Exhibit R-1, Tab 25, page 132.

[58] In reference to his recommendations for penalties he was referred to Exhibit R-1, Tab 26 at page 152 where he said that even though the taxpayer kept proper books and records, after reviewing the costs of goods sold and expenses he found that the total documentation did not substantiate the expenses that were claimed in the income tax returns.

[59] He also found that the increase in net worth was incompatible with the reported income. The taxpayer reported $31,951, $8,362 and $47,673 respectively for 2001, 2002 and 2003. After the adjustments, net business income for 2002 increased by $37,234 and for 2003 it increased by $34,055. There was minimal net worth increase for 2001.

[60] The witness was asked how the Appellant could prove how he lived below the national average and he was told that he could provide food receipts.

[61] In re-direct the witness said that there was a discrepancy of $4,154 in the cost of goods sold. He was re-directed to Exhibit R-9, located in Exhibit R-1, Tab 12, his adjustments to income proposal, and he said that he heard nothing by way of evidence in Court that would change those recommendations.

[62] The claimed credit for the newspapers was never mentioned by the taxpayer. What he said in Court did not reflect a newspaper expense. It would be advertising expenses but not cost of goods sold.

[63] He was referred to Exhibit R-11, located in Exhibit R-1 at Tab 19, with regard to the calculation of the terminal loss. He said that they had enough documentation to calculate the terminal loss. What the Appellant provided on his income tax

return was not proper so they had to calculate it over again. They used the total purchase price found on the Appellant's tax documents from the Minister of Finance as $70,250 and not what the taxpayer had indicated. The tax return was incorrect.

[64] Again he said that once they had received representations on behalf of the taxpayer, they made adjustments to the Statistics Canada numbers.

Argument on Behalf of the Appellant

[65] The agent for the Appellant said that there were four major issues in the use of the net worth method of assessment. This method was procedurally wrong. This is not the normal method of assessment. Tax is normally assessed on the basis of the return.

[66] The net worth method is used when no return has been filed (or the return filed is insufficient) or there is a lack of records.

[67] Chief Justice Bowman described the net worth method as a "last resort" in *Ramey v. Canada*, [1993] T.C.J. No. 142.

[68] In *Poopathie Company Ltd. v. The Queen*, 2006 TCC 195, Justice Woods pointed out that the net worth method can be used when a taxpayer does not have sufficient books and records to verify the income reported on a return.

[69] Justice Campbell in *Duncanson v. The Queen*, 2000-2820(IT)I, said that it was a very unsatisfactory method capable of producing inaccurate results. She also referred to it as a "last resort" method that can be used.

[70] Here, it is clear that the Minister did not use the "records" method first but used the net worth method as his first choice. He referred to Exhibit A-1 in this regard and said that at that time the Minister had no records as the audit had not been done. Consequently the whole assessment should be struck down.

[71] In this case business records were kept and they were reliable. Nothing in the evidence suggests that sales records were missing or did not disclose the true facts. The Minister decided on the basis of low reporting income and the use of the cash basis in his business.

[72] The assessment is not reasonable. It was based on unreliable Statistics Canada figures. This was really a "lifestyle assessment" and not really a "net worth assessment". When a net worth assessment becomes a "lifestyle assessment" it is extremely prejudicial to the low income group of taxpayers. It is used so that the onus of proof is changed.

[73] He referred to the case of *Loewen v. The Queen*, 2003 TCC 101, which is an Order by Associate Chief Justice Bowman pointing out that "a *negative* is in general incapable of proof".

[74] For the years 2002 and 2003 the net worth increase was not negative. For the three years in total the net worth inrease was moderate ($10,000).

[75] He argued that the Appellant, according to the evidence had $55,445 left for living. Was this enough? If you used the Statistics Canada figures he needed over $100,000. The Minister was assuming that the Appellant was living the life of a middle class family.

[76] The onus is on the Minister to show that the statement filed by the Appellant was wrong because Mr. Wang has shown that he does not belong to "a middle class family".

[77] Mr. Wang's net worth for the years 2002 and 2003 was $100,000, less than the national average. He had no stocks, no life insurance and no pension. His deposits in 2002 and 2003 were only seven percent and 37% of the national average. He did not have the means to meet the requirements of the national average.

[78] Mr. Wang was a new immigrant and they are normally in the lower income class category. Their income is normally only 70% of the national average. They normally struggle for 10 years after coming to Canada. One to three new immigrants are living on low income.

[79] He referred again to the case of *Loewen v. The Queen* above, and argued that the validity of the assessment depends upon the application of the law to the facts and not upon the assessor's analysis.

[80] The facts have failed to make the connection between the Appellant and the middle class level. Statistics Canada's information is not reliable and must be used carefully.

[81] He opined that the Tax Court of Canada is skeptical of net worth assessments and referred to the case of *Cox v. The Queen*, Docket 1999-4002(IT)G, where the Court made a small downward adjustment based upon the way that the appellant lived.

[82] With respect to the penalties, the agent argued that there was no basis for their application. The amounts were not material. The burden is on the Minister to show that the amount of income that the Appellant said that he required was not reasonable. The Statistics Canada model is flawed. The lifestyle method is very flawed. It is not the application of the law to the facts.

[83] The Minister totally ignored the records. The only fault of the Appellant was his low income.

[84] The appeal should be allowed in full or the living expenses should be reduced to 53% of the amount used and the penalties should be removed. Statistics Canada figures show that people who earn low income spend only 53% of the national average.

Argument on Behalf of the Respondent

[85] Counsel for the Respondent said that there were three issues here:

(1) Was the net worth assessment method proper under s. 152?

(2) Were the penalties justified? and

(3) The burden of proof.

[86] The onus of proof is on Mr. Wang to disprove the net worth assessment. He has not introduced any evidence to show what his real income was.

[87] In 2002 he claimed $4,154 for costs of goods sold. He initially said that this amount was expended on advertising, not on newspapers as he claimed in Court. He did not claim these expenses originally.

[88] With respect to motor vehicle expenses he told the auditor that he wanted to claim more even though he said that 95% of the deliveries were at his business. He

was allowed 5% of these expenses. The expenses were never claimed until the audit took place.

[89] He told the auditor that he did mostly cash business and that he did not always make deposits to the bank.

[90] He provided the figures for his personal expenses, R-5, located in Exhibit R-1, Tab 10. He showed expenses of $22,850 in 2001 and $19,412 in 2002 and it only showed income of $8,362 and a loss of $47,673.37 in those years respectively.

[91] He reported extremely low amounts as being expended on food and clothing but had no receipts.

[92] There was no evidence as to why his parents-in-law would provide all of the clothing after purportedly giving (loaning) them $85,000 already. He said that he spent no money on health care or personal care in spite of having a young baby.

[93] The evidence he gave for his expenditures or personal care, health care and recreation were different from what he reported.

[94] He said that he spent nothing on alcohol and tobacco in spite of admitting that he went out with friends. He said that he spent nothing on gifts and almost nothing on travel. His numbers were unreasonable and he could not keep his numbers straight.

[95] Counsel agreed that Schedule III to the net worth statement had to be amended to allow for the double counting of the $2,447.81. The appeal should be allowed to that extent.

[96] The Appellant overstated his terminal loss on the business by $13,824, on the basis of information he supplied to the auditor.

[97] He told many stories with respect to receiving money from friends coming from China. Much information was not given to the auditor.

[98] The Minister allowed him to deduct an amount of money which it could trace to his relatives through bank records and documents. The letters written by his friends regarding other disallowed amounts were not credible. His evidence was that they were not entitled to use some of the money. There was no record from

any of the persons who were supposed to have provided the money. The amounts were fabricated and changed.

[99] With respect to penalties, there was an under-reporting of income and it was done deliberately. The amounts under-reported were material. In 2002 the discrepancy in net worth was $37,137.91 and he only reported $8,362 in income. In 2003 he reported a net loss of $47,673 when there should have been a gain of $35,509.20.

[100] The Appellant was able to pay his mortgage and all of his expenses and yet reported this small income.He was aware of the discrepancies and knew that the amounts that he reported were not accurate.

[101] His evidence was not credible and the letters from his friends about bringing him money from China were fabricated. His personal expenditures statements were incorrect. There was no evidence from the Appellant that he did everything that he could to report accurately.

[102] Counsel referred to *Ramey v. Canada*, *supra*, with respect to when the net worth method of assessment can be used. It is not only to be used where records are not available but where amounts are not reported. Here there were cash amounts that were not reported.

[103] The cases referred to support the assessment here. In cases where the Court has allowed amounts to be deducted, there were documents to prove the receipt of such monies. Here there were no such documents which can be accepted.

[104] There were inconsistencies in the Appellant's position. He claims to live below the national average and yet says that he received $84,800 from friends and relatives.

[105] In argument his agent asks the Court not to accept the Statistics Canada figures but then requests that the same figures be adjusted on the basis of those figures.

[106] He told the auditor that he only had one car but had two. The auditor went ahead with the net worth assessment on the basis of his team leader's permission, not on his own, as the agent suggested.

[107] Some records were kept but they were not accurate or correct.

[108] Counsel asked the Court to draw an adverse reference from the fact that some material witnesses were not called without an adequate explanation.

[109] The *Charter* argument set out in the Notice of Appeal has been abandoned.

Analysis and Decision

[110] Both counsel for the Respondent and the agent for the Appellant agreed that there were three main issues in this case:

1. Was the use of the net worth assessment method justified?

2. Were the penalties justified?

3. Has the burden of proof been met?

[111] The agent for the Appellant took the position that the burden of proof was on the Minister to show that the net worth method was the proper method of assessment because the Minister relied upon unreliable statistics and assessed the Appellant using the lifestyle of a middle class person, whereas the Appellant has shown that he properly belonged in a lower class of income earner. The national average statistics used by the Minister did not apply to the Appellant because of the way in which he lived.

[112] Counsel for the Respondent took the position that the burden on the Appellant was to show that the assessment was incorrect.

[113] As in the case of *Bigayan v. The Queen*, 2000 DTC 1619, referred to in *Cox,* above, neither the Respondent nor the Appellant called anyone from Statistics Canada with respect to the figures used but the assessor was called in the case at bar. The Appellant's agent here, unlike the *Bigayan* case above, was able to cross-examine the assessor and he did so. There, Associate Chief Justice Bowman was asked to make adjustments to figures based upon the Statistics Canada figures but he declined to do so because he was not provided with any more reliable figures to use.

[114] In this case the agent asks the Court to reduce the assessment and use only 53% of the Statistics Canada figures, even though there was no evidence before the Court that this percentage more properly reflected the economic situation of the

Appellant's family. Indeed, there was nothing in the Appellant's evidence which could be relied upon, which would entitle the Court to do so.

[115] In *Cox*, above, the Court was able to make a small adjustment downward because it had an idea of how the Appellant lived. The learned trial judge obviously believed the evidence given by the Appellant in that case regarding his lifestyle and reduced his personal expenses accordingly.

[116] In the case at bar the Court has great difficulty in accepting the evidence given by the Appellant in that regard. His evidence was contradictory and in many instances the expenses indicated by him were so small or non existent so as to be unrealistic.

[117] In the case of health care, he claimed no expenses, in spite of having his mother-in-law living in the household and having a small baby living there. His claim of $240 for personal care, $600 for recreation, $600 for food, $600 for clothing, "0" for tobacco and alcohol and "0" for gifts and contributions were not reasonable. He did admit that he drank but said that others always paid for his drinks. It was his position that his mother-on-law brought all of the clothes from China and so he had no clothing expenses for the whole year. This evidence is not credible.

[118] The net worth method of assessment has been referred to as a last resort to be used when all else fails. But it is also used when the taxpayer has kept no records, or inadequate records, or where there is a "cash business" or even where records and documents provided by the taxpayer do not "add up" and where there are inconsistencies in the figures and information provided by the taxpayer.

[119] In this case all of these factors were present. The very figures that the Appellant gave in returns filed with the Minister were contradicted by documents he filed with the Minister. For instance, in 2002 his personal expenditures sheet showed total expenses of $19,412 while his income tax return showed net income of only $8,133.48.

[120] Some evidence was given by the Appellant that he had received a relatively large amount of money from family in China but there were no adequate records to support this fact and none of the persons who supposedly brought the money to him in Canada were called to testify. The Court will draw an unfavourable inference against the Appellant in this regard because there was no evidence given as to why those persons did not testify.

[121] In this case before the assessment was finalized the Appellant was given an opportunity to explain any discrepancies that the auditor found, to justify the taxpayer's position and to provide any further records which would support the taxpayer's position. According to the auditor, no such documentation was forthcoming.

[122] The auditor gave every opportunity to the taxpayer to explain the discrepancies and show that the auditor's preliminary findings were incorrect. He even took into account that the Appellant's mother-in-law was living with him part of the time and the child was out of the country. He also believed that the numbers provided by Statistics Canada were "a bit conservative" for the city of Toronto.

[123] After his initial letter to the taxpayer, he sat down with him and his representative and considered their explanations. As a result of their discussions he made some adjustments.

[124] The explanation given by the Appellant that he had received money from his friends in China and his mother-in-law was not given until after the CRA had made its findings. The auditor did not believe the explanations given about the cash and did not believe the letters.

[125] He did however allow that the Appellant's wife had received some cash from relatives because there was a paper trail for it.

[126] The auditor confirmed that he took into account information provided by the taxpayer which affected his application of the Statistics Canada figures. He admitted that he had received some books and records but they were insufficient for him to complete his audit so he used the net worth method.

[127] The Court is satisfied that the auditor was well within his rights to use the net worth method of assessment for all of the reasons given and indeed this was a case where he could not proceed otherwise.

[128] The Court is satisfied that the Appellant has failed to meet the burden of showing that the assessment was incorrect except with respect to one item which will be considered at the end of these reasons.

[129] With respect to penalties, the Court disagrees with the arguments of the agent for the Appellant. The Court is satisfied that the amounts were material, and

that the under-reporting of the income must have been done deliberately. His personal expense statements were incorrect and these inaccuracies must have been deliberate.

[130] The Minister has met the burden of showing why the penalties should be applied.

[131] The Court is satisfied here that there were no documents presented or evidence advanced that is reliable that would move the Court to make adjustments to the net worth assessment other than with reference to the $2,447.81, referred to in Schedule III of the Reply to the Notice of Appeal, which, in essence was double-counted.

[132] The appeals are allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Schedules III, V and VI of the Reply will be amended as follows:

<u>Schedule III</u>

- discrepancy per net worth, 2002, changed from $39,595.72 to $37,137.91.

<u>Schedule V</u>

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- unreported business income per net worth in 2002, changed from $33,702.33 to $31,244.46

<u>Schedule VI</u>

- unreported business income per net worth, 2002-12-31, changed from $33,702 to $31,244

Total adjustment – 2002-12-31, changed from $37,234 to $34,786.

[133] In all other respects the appeals are dismissed.

Signed at Vancouver, British Columbia, this 19th day of June 2008.

"T. E. Margeson"

Margeson J.

CITATION:	2008TCC308
COURT FILE NO.:	2007-1342(IT)I
STYLE OF CAUSE:	XIN WANG AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 29, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice T.E. Margeson
DATE OF JUDGMENT:	June 19, 2008

APPEARANCES:

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Counsel for the Respondent:	Samantha Hurst

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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