Docket: 2006-3362(IT)G

BETWEEN:

WALTER STURZER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 12 and May 13, 2008, at Montreal, Quebec.

Before: The Honourable Justice Paul Bédard

Appearances:

Counsel for the Appellant:	Serge Fournier
Counsel for the Respondent:	Benoît Mandeville

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2000, 2001 and 2002 taxation years is dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 8th day of January 2009.

"Paul Bédard"

Bédard J.

Citation: 2009 TCC 1
Date: 20090108
Docket: 2006-3362(IT)G

BETWEEN:

WALTER STURZER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard J.

[1] The Appellant is appealing the reassessments made in his regard by the Minister of National Revenue ("the Minister") for the 2000, 2001 and 2002 taxation years ("the years in issue"). In making these reassessments, the Minister determined, using the net worth method, that the Appellant had unreported income of $213,115 in 2000, $1,132,169 in 2001 and $626,649 in 2002, as set out in detail in Schedule A attached hereto, and, for each of those years, the Minister imposed a penalty under subsection 163(2) of the *Income Tax Act* ("the ITA").

[2] When making the reassessments in issue in the case at bar, the Minister made the following assumptions of fact set out in paragraph 9 of the Amended Reply to the Notice of Appeal:

[TRANSLATION]

(a) Since March 16, 1989, the Appellant had been a Canadian resident within the meaning of the version of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("ITA") applicable to this case. **(admitted)**

(b) The Appellant was the sole shareholder of Les investissements W.M. Inc. (Investissements W.M.) and 3090-1714 Québec Inc. (3090-1714). **(admitted)**

(c) Investissements W.M. was in the amusement and gambling machine business, and 3090-1714 operated a bistro/bar. **(admitted)**

(d) Investissements W.M. and 3090-1714 were dissolved in July 1997. **(admitted)**

(e) The Appellant went bankrupt on December 24, 1997. **(admitted)**

(f) In his bankruptcy proceedings, the Appellant declared that he owed Revenue Canada Taxation, now the Canada Revenue Agency (CRA), $900,000. **(admitted)**

(g) The Appellant gave as the reason for this bankrupt of his having assumed the debts of Investissements W.M. and 3090-1714 following the issuance of goods and services tax ("GST"), Quebec sales tax ("QST") and income tax assessments by Revenu Québec. **(admitted)**

(h) The Appellant was discharged from his bankruptcy on September 24, 1998. **(admitted)**

(i) On the said discharge date of September 24, 1998, the Appellant was intercepted by Canadian customs authorities at Dorval Airport (now Pierre Elliott Trudeau Airport) carrying the equivalent of approximately C$48,000 in foreign currency. **(admitted except as to the amount)**

(j) On November 10, 1999, the Appellant, in consideration of $40,000, acquired from Léopold Beaulieu, a person not related to the Appellant within the meaning of subsection 251(2) of the ITA, a parcel of land ("the first parcel") located in the municipality of Saint-Sauveur, Quebec. **(admitted)**

(k) On March 2, 2000, the Appellant, in consideration of $5,000, acquired from Les roulottes des Monts Inc., a business corporation not related to the Appellant within the meaning of subsection 251(2) of the ITA, a parcel of land ("the second parcel") adjacent to the first parcel. **(admitted)**

(l) On the same day, March 2, 2000, the Appellant acquired, by gift *inter vivos* from his wife, Lyne Brunet, another parcel of land ("the third parcel") adjacent to the first parcel. **(admitted)**

(m) On September 18, 2000, the Appellant, in consideration of $150,000, acquired from Développement Golfmont Inc., a business corporation not related to the Appellant within the meaning of subsection 251(2) of the ITA, a 5688.7-square-metre vacant lot ("the lot") in the municipality of Morin Heights, Quebec. **(admitted)**

(n) During the taxation years in issue, the Appellant incurred the following expenses ("the construction expenses") for the construction of a residence ("the residence") on the lot. **(admitted)**

Taxation year	**Construction expenses**
2000	$39,990
2001	$978,753
2002	$519,940
Total	$1,538,683

(o) On November 5, 2002, the Appellant disposed of the first, second and third parcels to Les Roulottes des Monts Inc. for $100,000. The Appellant did not include the gain from this disposition in his 2002 income tax return. **(denied)**

(p) The only income reported by Appellant in his income tax returs for the taxation years in issue ("the reported income") was the following: **(admitted)**

Taxation year	**Commission income**
2000	$52,000
2001	$41,000
2002	$45,000

(q) Using the assessment method based on change in net worth (see Tables I and II and Schedules I through V), the CRA determined that the Appellant had failed to report the following income amounts ("the unreported income") in his income tax returns for the taxation years in issue: **(denied)**

Taxation year	**Unreported income**
2000	$213,115
2001	$1,132,169
2002	$626,649
Total	$1,971,933

(r) The unreported income is primarily from the Appellant's operation of amusement machines. **(denied)**

(s) The Appellant paid the construction expenses using solely the reported income and the unreported income. **(denied)**

(t) No liabilities were identified with respect to the residence. **(denied)**

(u) For each taxation year in issue, the Appellant filed a T1135 Form ("Foreign Income Verification Statement") indicating that he held funds outside Canada worth more than $100,000, and real property outside

Canada worth more than $500,000. According to these forms, the funds and real property were located in Europe (other than UK). **(admitted)**

(v) In January 2003, the Appellant told a Canadian customs inspector that he was returning from a business trip to Vienna, Austria, and that he travels to Austria roughly five times a year. **(denied)**

(w) In addition, he told the inspector that he was a consultant to European casinos, which paid him by transferring funds to his Canadian bank accounts. **(denied)**

(x) By failing to report the unreported income in his tax returns for the taxation years in issue, the Appellant made a misrepresentation attributable to neglect, carelessness or wilful default, or committed fraud. **(denied)**

[3] The Appellant's objections pertain to

(i) the Minister's imposition of a penalty with respect to the additional income for each year in issue, and

(ii) the specific considerations set out below, with regard to the additional income for the years in issue.

Gifts from his father

(a) The Appellant argued that the Minister's net worth calculations should have taken into account gifts received from his father during the years in issue. In this regard, the Appellant claimed that, during those years, his father, Rudolf Dominkovits, deposited a total of about $750,000 into a bank account that he held jointly with the Appellant.[1] The Appellant maintained that, during the years in issue, he used for personal purposes all the amounts thus deposited by his father into that account ("the joint bank account").

[1] Account number 2 641 827 with the Raiffeisen Bank.

Loans

(b) The Appellant submitted that the Minister's calculations of his net worth should have taken into account loans made to him by an Austrian bank ("the Raiffeisen Bank") and by Samisa Anstalt ("Samisa"), a company having its head office in Liechtenstein. In this regard, the Appellant claimed that he owed the Raiffeisen Bank $424,728 as at December 31, 2001, and $434,390 as at December 31, 2002. The Appellant also claimed that he borrowed the following amounts from Samisa:

- €109,009.25 on March 22, 2001
- $300,000 on February 8, 2002
- $100,000 on March 13, 2002
- €273,250 on June 6, 2002.

[4] Canada Customs and Revenue Agency ("CRA") auditor Danielle Langlois was the only witness to testify in support of the Minister's position in this appeal. The Appellant himself testified, and Yves Ladouceur, the executing notary in connection with, *inter alia*, the Appellant's acquisition of the various properties and the creation of the $1,500,000 hypothec that the Appellant granted to Samisa, also testified in support of the Appellant's position.

Analysis

[5] The first question to be addressed is the burden of proof on the Appellant in the present appeal. My colleague Judge Tardif had occasion to deal with the burden of proof in a matter where, as here, a net worth assessment was involved.

[6] In *Bastille v. Canada*, [1998] T.C.J. No. 1080 (QL), 99 DTC 431, [1999] 4 C.T.C. 2155, he wrote as follows, at paragraphs 5 et seq.:

> [5] I think it is important to point out that the burden of proof rests on the appellants, except with respect to the question of the penalties, where the burden of proof is on the respondent.

> [6] A **NET WORTH** assessment can never reflect the kind of mathematical accuracy that is both desired and desirable in tax assessment matters. Generally, there is a certain degree of arbitrariness in the determination of the value of the various elements assessed. The Court must decide whether that arbitrariness is reasonable.
>
> [7] Moreover, use of this method of assessment is not the rule. It is, in a way, an exception for situations where the taxpayer is not in possession of all the information, documents and vouchers needed in order to carry out an audit that would be more in accordance with good auditing practice, and most importantly, that would produce a more accurate result.
>
> [8] The bases or foundations of the calculations done in a net worth assessment depend largely on information provided by the taxpayer who is the subject of the audit.
>
> [9] The quality, plausibility and reasonableness of that information therefore take on absolutely fundamental importance.

[7] Another of my colleagues, Judge Bowman (as he then was), made the following remarks in *Ramey v. Canada*, [1993] T.C.J. No. 142 (QL), [1993] 2 C.T.C. 2119, 93 DTC 791:

> I am not unappreciative of the enormous, indeed virtually insuperable, difficulties facing the appellant and his counsel in seeking to challenge net worth assessments of a deceased taxpayer. The net worth method of estimating income is an unsatisfactory and imprecise way of determining a taxpayer's income for the year. It is a blunt instrument of which the Minister must avail himself as a last resort. A net worth assessment involves a comparison of a taxpayer's net worth, i.e. the cost of his assets less his liabilities, at the beginning of a year, with his net worth at the end of the year. To the difference so determined there are added his expenditures in the year. The resulting figure is assumed to be his income unless the taxpayer establishes the contrary. Such assessments may be inaccurate within a range of indeterminate magnitude but unless they are shown to be wrong they stand. It is almost impossible to challenge such assessments piecemeal. The only truly effective way of disputing them is by means of a complete reconstruction of a taxpayer's income for a year. A taxpayer whose business records and method of reporting income are in such a state of disarray that a net worth assessment is required is frequently the author of his or her own misfortunes. . . .

[8] In assessing the evidence adduced by the Appellant, I must comment on the failure to call certain witnesses and provide appropriate documentary evidence that could have confirmed the Appellant's assertions. In *Huneault v. Canada*, [1998] T.C.J. No. 103 (QL), 98 DTC 1488, at paragraph 25, my colleague Judge Lamarre noted certain remarks made by Sopinka and Lederman in their book *The Law of Evidence in Civil Cases,* and quoted by Judge Sarchuk of this Court in *Enns v. M.N.R.*, 87 DTC 208, at page 210:

> In *The Law of Evidence in Civil Cases*, by Sopinka and Lederman, the authors comment on the effect of failure to call a witness and I quote:
>
> > In *Blatch v. Archer*, (1774), 1 Cowp. 63, at p. 65, Lord Mansfield stated:
> >
> > > "It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted."
> >
> > The application of this maxim has led to a well-recognized rule that the failure of a party or a witness to give evidence, which it was in the power of the party or witness to give and by which the facts might have been elucidated, justifies the court in drawing the inference that the evidence of the party or witness would have been unfavourable to the party to whom the failure was attributed.
> >
> > In the case of a plaintiff who has the evidentiary burden of establishing an issue, the effect of such an inference may be that the evidence led will be insufficient to discharge the burden. (*Lévesque et al. v. Comeau et al.* [1970] S.C.R. 1010, (1971), 16 D.L.R. (3d) 425).

[9] In the case at bar, before analyzing the relevant facts in detail, it would be helpful to make a few general comments about the Appellant's credibility. In my opinion, it would be dangerous to accord any weight to the Appellant's testimony in the absence of corroborative and probative evidence in the form of reliable documentation or the testimony of credible witnesses.

[10] Not only were the Appellant's answers and explanations generally vague and imprecise, and frequently incomprehensible, they were sometimes contradictory, and contradicted by documentary evidence. Quite telling in this regard is the Appellant's

testimony[2] that he deposited some $200,000 from the operation of his consulting business abroad, into the joint bank account during the years in issue. The Appellant explained that the roughly $200,000 deposited into the joint account was related to the consulting fees billed to his clients, as shown by the invoices tendered as Exhibits A-1 through A-5. With respect to the invoice tendered as Exhibit A-1, I would note that the $108,000 in fees billed on December 31, 2002, are related to services supposedly rendered in 2001 and 2002. The Appellant explained that about $54,000 of these fees was earned in each of those years, and that he had had to incur approximately $10,000 in expenses during each of those same years in order to earn that income. It should be pointed out that the Appellant admitted that the allocation of that income to 2001 and 2002 and the amount of the expenses incurred during each of those years were merely estimates, because he was unable to refer to accounting records or supporting documents, since no such documentation existed. The Appellant explained that he had reported roughly $44,000 in net revenue from the client in question for each of those taxation years. I would also note, on the basis of the document filed as Exhibit A-1, that the Appellant reported approximately $44,000 in fees for 2001 before he had even sent his invoice to his client, who, I repeat, was billed on December 31, 2002. Lastly, the Appellant testified that his client paid the $108,000 in fees in full by cheque in 2003 (i.e. not during the years in issue), but he did not specify the date on which the cheque was cashed. I would add that the Appellant did not think it necessary to produce a true copy of the cheque. With respect to the invoice tendered in evidence as Exhibit A-2, I would note that the $14,000 in fees billed on September 15, 2002, were related to services supposedly rendered in the same year. The Appellant explained that his client had paid him in cash, but did not specify the date of the payment. It should be noted that, when questioned about this, the Appellant admitted that he did not recall what he did with the cash. With respect to the invoice tendered in evidence as Exhibit A-3, I would note that the $7,400 in fees billed on February 24, 2000, were related to services supposedly rendered in January and February of that year. The Appellant explained that he did not incur any expenses to earn that income, and that he was paid in cash, but he did not specify the date of the payment. It should also be pointed out that, at the end of his testimony, the Appellant admitted that he did not recall what he did with the cash. With respect to the invoice tendered as Exhibit A-4, I would note that the $90,000 in fees billed on April 21, 2000, were related to services supposedly rendered in 1999 and 2000. The Appellant also stated that, in order to earn that income of $90,000, he incurred expenses of roughly $5,000 in 1999 and $10,000 in 2000. It should be noted that the Appellant tendered in evidence a document (Exhibit A-26) suggesting that the client paid the billed fees in 2000 by transferring

[2] See pages 91, 92, 93 and 114-150 of the transcript.

$90,000 directly to the joint bank account. With respect to the invoice tendered in evidence as Exhibit A-5, I would note that the $10,000 in fees billed on February 15, 2001, were related to services supposedly rendered that same year. The Appellant explained that he had incurred no expenses to earn that income, and that the fees so billed were paid in cash, but he did not specify the date of the payment. It should also be noted that, at the end of his testimony, the Appellant admitted that he did not recall what he did with that money.

[11] The invoices tendered in evidence and the Appellant's testimony concerning them show that the fees billed in this fashion totalled $229,400 and that the expenses incurred by the Appellant (assuming the fees paid in cash were deposited into the joint bank account during the years in issue) to earn those fees totalled approximately $35,000; thus, no more than $121,400 out of the fees received could have been deposited into the joint bank account during the years in issue. Again, I point out that, at the beginning of his testimony, the Appellant stated that, during the years in issue, he deposited into the joint bank account some $200,000 in fees from the operation of his consulting business abroad.

[12] I would add that the Appellant's attitude with respect to our self-assessment-based taxation system only added to my doubts about his credibility. The evidence in this regard discloses as follows:

(i) The Appellant did not retain any supporting documents concerning the expenses that he allegedly incurred to earn his business income during the years in issue.

(ii) The Appellant kept no accounting records in respect of his business income during the years in issue.

(iii) The Appellant did not state his gross and net business income on the appropriate lines of his income tax returns filed for the years in issue, nor did he attach to those returns an income statement for his business. The Appellant explained that the chartered accountant who helped him fill out his income tax returns for the years in issue told him that, at the very most, he was required to enter his net business income on the “other income” line of his returns. I do not believe a word of that. Rather, it is my view that the Appellant wanted to conceal things from the CRA.

(iv) In his 2002 income tax return, the Appellant did not include a $55,000 capital gain from the disposition of properties acquired for $45,000 in 2000. The Appellant's explanations in this regard are worth quoting:

> Q. Did you declare the gain on the sale of that?
>
> A. No, I did not declare the gain. I was believing that, so that I was living there, beside it and I wanted to build a home there, a new home there, it was also like personal property, you know, so it is why I did not declare this at that time.[3]

I would note that the Appellant obviously did not ask the accountant who prepared his income tax returns during the years in issue for any explanations regarding the tax treatment of this gain.

(v) The Appellant did not file an income tax return for his 2004 taxation year, the year in which he ceased to be a Canadian resident. Naturally, the Appellant said that he did not know that Canadian residents must file an income tax return for the year in which they cease to be a Canadian resident. And of course, the Appellant did not ask his accountant about the nature of his tax obligations in such a case.

(vi) The Appellant did not declare the significant capital gain from the disposition of the residence built on the lot acquired on September 18, 2000 for $150,000. The Appellant's explanations in this regard are so revealing as to his attitude regarding our tax system that they are worth quoting:[4]

> [63] Q. Okay. So your capital gain from the disposition of the house is $100,000?
>
> A. It should be, yes.
>
> [64] Q. Yes. Have you filed a tax return for the 2007…
>
> A. No, no, I did not.
>
> [65] Q. . . . taxation year?

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[3] See page 22 of the transcript.

[4] See the transcript for May 13, 2008, at paragraphs 63, 64 and 65.

A. Not yet, I don't have the money.

[13] Lastly, I would point out that the Appellant's testimony that his loan agreement with Samisa was an oral one was contradicted by the credible testimony of Mr. Ladouceur, the notary, who stated that the Appellant had told him that he had a written loan agreement with Samisa.

Gifts from the Appellant's father

[14] I refer again to the Appellant's submission that the Minister's computation of his net worth should have taken into account gifts received from his father (who is apparently 80 years of age and lives in Austria) during the years in issue. The Appellant's evidence in this regard consisted of his own testimony and two documents filed as Exhibits A-9 and A-20, which, in my view, assuming that they are even admissible in evidence, do not in any way establish that Mr. Dominkovits, who is supposedly the Appellant's father, deposited a total of $750,000 into the joint bank account during the years in issue. The Appellant's testimony concerning the alleged gifts can be summarized as follows: His father, who has been retired for about 20 years, made his fortune in construction.[5] During the years in issue, he made deposits of amounts totalling approximately $750,000, some of which the Appellant used during those years to defray the costs of building his residence in the municipality of Morin Heights, Quebec. The Appellant explained that, given his father's age and state of health, he could not ask him to come and testify. Lastly, the Appellant testified that he could not adduce banking documents showing that his father had deposited the amounts in question into the joint bank account because the documents issued by Austrian banks do not contain such information.[6] The Appellant went so far as to add that Austrian banks do not even provide their customers with monthly statements that set out all the transactions done by those customers on their bank accounts during a given month.[7]

[15] I immediately note that I find it implausible that Austrian banks do not provide their customers with periodic statements showing the transactions (deposits and withdrawals) that they make on their accounts. If the father's bank statements and the joint bank account statements had been tendered in evidence and corroborated by representatives of the banks concerned, the plausibility of deposits by the father into

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5 See paragraphs 6-9 of the transcript.
6 See paragraphs 709-11 of the transcript.
7 See paragraph 695 of the transcript.

the joint bank account could have been established. The Appellant could also have provided adequate proof of his father's personal assets (assuming that Mr. Dominkovits — whose surname is, I stress, very different from the Appellant's — is even his father) and thereby established the likelihood that his father was financially able to make such astronomical gifts. The Appellant had the ability to provide such evidence, but he did not do so. From this I infer that such evidence would have been unfavourable to him. Since I have already decided that I will accord no weight to the Appellant's testimony in the absence of corroborative or probative evidence in the form of reliable documentation or credible testimony, I am compelled to find here that Mr. Dominkovits did not make gifts totalling roughly $750,000 to the Appellant during the years in issue.

Loans from Samisa

[16] As we have seen, the Appellant submitted that the Minister's calculation of his net worth should have taken into account loans that were allegedly made to him by Samisa during the years in issue. In this regard, the Appellant claims that he borrowed the following amounts from Samisa.

(i) €109,009.25 on March 22, 2001;
(ii) $300,000 on February 8, 2002;
(iii) $100,000 on March 13, 2002;
(iv) €273,250 on June 6, 2002.

[17] The Appellant's testimony regarding the loans that he claims to have received from Samisa discloses the following:

(i) One of his friends referred him to Samisa in 1998. The Appellant's testimony regarding the circumstances of his introduction to Samisa, the nature of his relationship with Samisa, and, lastly, the nature of Samisa's activities, is worth quoting:[8]

> [163] Q. Who were you dealing with when you were dealing with Samisa during those years?
>
> A. In this time, Mr. Hoops(?)
>
> [164] Q. How did you meet Mr. Hoops, Mister...

[8] See the transcript for May 12, 2008, at paragraphs 163-74.

A. Through a friend of mine, he introduced me to him in '98 or '99.

[165] Q. In what circumstances, Mr. Sturzer?

A. What?

[166] Q. In what circumstances did you meet this friend who introduced you to such...

A. I made... for this friend I made a consulting job at this time and he introduced me after to the people from Samisa.

HIS HONOUR:

[167] Q. So Mr. Hoops is the one who introduced you to...

A. No, Mr. Zaunmaier(?), it was this name who has introduced me, it was Mr. Zaunmaier.

[168] Q. He's a friend...

A. A friend of mine. He introduced me to Mr. Hoops.

M[e] SERGE FOURNIER:

[169] Q. So in 1998 you were doing business with Mr. Zaunmaier?

A. Zaunmaier, yes.

[170] Q. Can you spell the name for us?

A. I have to write it down. So it was Z-A-U-N-M-A-I-E-R.

HIS HONOUR:

[171] Q. So who's that person?

A. He's a friend of mine, he introduced me to Samisa.

M[e] SERGE FOURNIER:

[172] Q. What kind of friend, Mr. Sturzer?

A. A business partner, a business friend.

[173] Q. Okay. And when was the first time you met Mr. Hoops?

A. Mr. Hoops, in '98.

[174] Q. And what were the activities of Samisa as they were described to you?

A. The activities of Samisa were lending money while making investments in numerous businesses. The exact extent I don't know of it exactly.

(ii) He is in no way related to Samisa. He explained that he had no interest in Samisa, whether direct or indirect.

(iii) Samisa granted him the following loans:

(a) €109,009.25 on March 22, 2001;
(b) $300,000 on February 8, 2002;
(c) $100,000 on March 13, 2002;
(d) €273,250 on June 6, 2002;
(e) €30,000 on October 7, 2003;
(f) $145,000 on January 4, 2004;
(g) €20,000 on October 12, 2004;
(h) €20,000 on November 18, 2004;

(iv) The loan (line of credit) agreement between the Appellant and Samisa was an oral one.[9] The Appellant explained that, under this oral agreement, Samisa granted him a $1,500,000 unsecured line of credit bearing interest at a rate of 5% per annum (calculated annually). The principal was to be repaid, together with accrued interest, when the loan came due. It should be noted that the due date of the loan that is alleged to have been initially agreed to by the Appellant and Samisa cannot be gleaned from the Appellant's testimony. However, that testimony does establish that the parties subsequently agreed that the principal, along with the interest, would be repayable upon the sale of the residence.[10]

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9 See the transcript, at paragraph 1284.
10 See the transcript, at paragraphs 1405-17.

(v) Under the loan, Samisa transferred directly into the bank account of Construction Raymond & Fils Inc., on behalf of the Appellant, a sum of $300,000 on February 8, 2002, and $100,000 on March 13, 2002, in payment of construction costs with respect to the Morin Heights residence.

(vi) By late 2002, and more insistently starting in 2004, Samisa was asking the Appellant to grant it a hypothec on the residence as security for the payment of the debt.[11]

(vii) The hypothec that Samisa was asking for was finally granted on July 7, 2005, a few days prior to the reassessments under appeal herein. The Appellant explained that the fact that the deed of hypothec was signed a few days prior to the issuance of the reassessments was purely coincidental. He explained that he had asked the notary, Yves Lamoureux, to prepare the deed of hypothec as early as the beginning of May 2005. It should be noted that Mr. Lamoureux confirmed this assertion in his testimony. The notary also said that in May 2005 Samisa and the Appellant had sent to another notary at his firm a power of attorney for the signature of the deed of hypothec.

[18] In addition, the sworn statement of Hans-Joachim Mechnig, a Samisa representative,[12] along with documents attached thereto, shows that Samisa granted the Appellant a $1,500,000 line of credit and released pursuant thereto the amounts indicated below:

> 2.- Samisa's commercial activities include loans to clients, and in fact opened a line of credit of $1,500,000, for Mr. Walter Sturzer;
>
> 3.- Samisa disbursed numerous sums, as follows:

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[11] See the transcript, at paragraphs 1291-93.

[12] See Exhibit I-22.

o March 22nd, 2001	Euros 109 009,25
o February 8th, 2002	Cdn $300,000.
o March 13th, 2002	Cdn $100,000.
o June 6th, 2002	Euros 273 250,00
o October 7th,2003	Euros 30 000,00
o October 7th, 2003	Euros 30 000,00
o January 7th, 2004	Cdn 145,000.
o October 12th, 2004	Euros 20 000,00
o November 18th, 2004	Euros 20 000,00

as it appears from the wire transfer statement annexed under as Exhibit S-1.

[19] The Appellant has not satisfied me that the amounts thus disbursed by Samisa for his benefit were disbursed under the terms of a genuine loan. Indeed, I find it entirely implausible that a loan company, even a foreign one, that is unrelated to the borrower, would grant a $1.5-million unsecured loan (with interest at 5% per annum, calculated annually, and the principal, along with the accrued interest, to be repaid when a residence under construction is ultimately sold) to any such borrower having the same profile as the Appellant had at the time that Samisa is alleged to have granted the Appellant that $1.5-million loan. I would point out that, at the time that the alleged loan was made, the Appellant was a new client of Samisa's who had hardly just recovered from a bankruptcy and whose income was but modest. In my opinion, it is more likely than not that the amounts that Samisa disbursed for the Appellant's benefit were not disbursed under the terms of a genuine loan. I am also of the opinion that it is more likely than not that the signing of the deed of hypothec a few days before the assessments under appeal were made was no coincidence. More likely than not, the people whom CRA auditor Danielle Langlois met with in early May 2005 notified the Appellant at that time that he was being investigated. The Appellant claims that Samisa was demanding such a hypothec as early as the end of 2002. I do not believe that for a second. How could Samisa possibly have been demanding such a hypothec to secure its loan in late 2002 when it continued to advance significant sums of money under the line of credit which it had allegedly extended to the Appellant? In my opinion, the hypothec is merely a sham intended to conceal the truth. I emphasize that it would have been very interesting to hear the testimony of a Samisa representative regarding all the circumstances surrounding this purported loan. On the basis of the foregoing, I find that, in computing the Appellant's net worth, the Minister was entitled not to take into account the amounts disbursed by Samisa for the Appellant's benefit.

Loan from the Raiffeisen Bank

[20] As we have seen, the Appellant submits that the Minister's net worth calculation should have taken account of loans allegedly made to him by the Raiffeisen Bank. In this regard, the Appellant submits that he owed that bank $424,728 as at December 31, 2001, and $434,390 as at December 31, 2002. The Appellant's evidence on this point essentially consisted of his testimony, and of documents from that bank which were tendered as Exhibits A-10, A-11, A-16 and A-17 under the objections of counsel for the Respondent. Exhibit A-10 is a letter dated September 8, 2006, from the Raiffeisen Bank to counsel for the Appellant. The letter states that the Appellant owed the bank $151,838.35 and €147,833.83 as at December 31, 2001. Exhibit A-16 is a computer statement from the Raiffeisen Bank showing that the Appellant's account #502-02664803 had a debit balance as at December 31, 2001, and that the Appellant's account #1-02614.827 had a debit balance of €147,583 on the same date. The letter tendered in evidence as Exhibit A-10 also states that the Appellant owed the Raiffeisen Bank €220,000 as at December 31, 2002. One of the documents filed as Exhibit A-11 is a computer statement from the same bank showing that the Appellant's account #1-02614.802 had a debit balance of €220,000 on December 31, 2002. Also filed by the Appellant as part of Exhibit A-11 was a computer statement from the same bank showing that the Appellant's account #2 641 827 had a debit balance of €43,267.21 on December 31, 2002. I would immediately note that the letter to counsel for the Appellant (which is a sort of summary of the amounts that the Appellant owed the Raiffeisen Bank as at December 31, 2001, and December 31, 2002) does not make reference to this liability of €43,267.21 as at December 31, 2002. It can be concluded from this that the documentary evidence adduced by the Appellant, assuming that it is even admissible, is not reliable. Since I have already decided that I will accord no weight to the Appellant's testimony in the absence of corroborative or probative evidence in the form of reliable documentation or credible testimony, and since the documentary evidence adduced by the Appellant does not appear to me to be reliable, I am compelled to find, in the instant case, that the Minister was not required to take into account the alleged loans to the Appellant from the Raiffeisen Bank in computing the Appellant's net worth.

[21] It now remains to answer the question of whether the Minister discharged the onus placed on him under subparagraph 152(4)(*a*)(i) and subsection 163(2) with regard to reassessing a taxpayer beyond the normal period and then imposing a penalty on him. Since I am satisfied that the Appellant received income that he did not report, and that his explanation for the identified discrepancy and the increase in

his assets is not credible, the Minister has discharged the onus of proof resting upon him under those provisions.

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

Signed at Ottawa, Canada, this 8th day of January 2009.

"Paul Bédard"

Bédard J.

SCHEDULE A

[TRANSLATION]

PERSONAL BALANCE SHEET
AS AT DECEMBER 31

ASSETS	**1999**	**2000**	**2001**	**2002**
Financial institutions (see Schedule I)	$13,507	$7,167	$26,415	$2,062
Capital assets (see Schedule II)	$40,000	$234,990	$1,213,743	$1,688,683
Furniture (see Schedule III)	$1	$1	$1	$1
Investments (see Schedule IV)	-	$5,000	$5,000	$5,000
TOTAL ASSETS	$53,508	$247,158	$1,245,159	$1,695,746
LIABILITIES				
TOTAL LIABILITIES	$0	$0	$0	$0
NET WORTH	$53,508	$247,158	$1,245,159	$1,695,746

Table I

[TRANSLATION]

CALCULATION OF CHANGE IN NET WORTH

	1999	2000	2001	2002
Closing net worth (Table I)	$53,508	$247,158	$1,245,159	$1,695,746
Opening net worth (Table I)		$53,508	$247,158	$1,245,159
Increase (decrease) in net worth		$193,650	$998,001	$450,587
Adjustments (additions):				
Personal expenses and unexplained withdrawals (see Schedule V)		$60,410	$165,015	$248,341
Instalments Federal income tax paid		$11,055	$10,153	$3,044
Total additions		$71,465	$175,168	$251,385
Adjustments (deductions):				
Gain upon disposition of land parcels		-	-	$27,500
Federal income tax refund (according to N.5)		-	-	$2,823
Total deductions		0	0	$30,323
Net adjustments		$71,465	$175,168	$221,062
Total income per net worth method		$265,115	$1,173,169	$671,649
Less: Total income reported by Walter Sturzer		$52,000	$41,000	$45,000
Change in net worth		$213,115	$1,132,169	$626,649

[TRANSLATION]

FINANCIAL INSTITUTION
AS AT DECEMBER 31

Name of financial institution	acct #	1999	2000	2001	2002
Caisse Desjardins de la Vallée de St-Sauveur	#23740	$13,507	$7,167	$26,415	$2,062
Total financial institution balance		$13,507	$7,167	$26,415	$2,062

[TRANSLATION]

CAPITAL ASSETS
AS AT DECEMBER 31

Description		1999	2000	2001	2002
Building – 17 St. Andrews, Morin Heights		-	$39,990	$1,018,743	$1,538,683
Lot – 17 St. Andrews, Morin Heights	Sept. 18, 2000	-	$150,000	$150,000	$150,000
Land – Lot 259 part 2	Nov. 10, 1999	$40,000	$40,000	$40,000	-
Land – Part 334	Mar. 2, 2000	-	$5,000	$5,000	-
Land – Lot 334 part 208	Mar. 2, 2000	-	-	-	-
Total capital assets		$40,000	$234,990	$1,213,743	$1,688,683

[TRANSLATION]

FURNITURE
AS AT DECEMBER 31

	1999	2000	2001	2002
Furniture	$1	$1	$1	$1
Total furniture	$1	$1	$1	$1

[TRANSLATION]

INVESTMENT
AS AT DECEMBER 31

		1999	2000	2001	2002
	Date acquired				
Caisse Desjardins St-Sauveur #23740-ET	April 14, 2000	-	$5,000	$5,000	$5,000
Total investment		-	$5,000	$5,000	$5,000

[TRANSLATION]

PERSONAL EXPENSES AND UNEXPLAINED WITHDRAWALS AS AT DECEMBER 31

	2000	2001	2002
Personal expenses and unexplained withdrawals:			
Purchases	$21,363	$9,973	$23,565
Administration costs	$91	$75	$704
Cheques	$44,628	$124,328	$131, 984
ATM withdrawals	$5,383	$61,979	$126,009
Pre-authorized debits	-	$52	$280
NSF charges	-	$10	-
Transfers	-	$6,200	$18,800
Service charges	-	-	$43
Payments related to construction of residence	-	($28,823)	($50,000)
Federal income tax payments	($2,496)	($2,329)	($1,956)
	($3,000)	($1,374)	($544)
	($63)	($2,538)	($544)
	($2,748)	($2,538)	-
	($2,748)	-	-
Total personal expenses and unexplained withdrawals	$60,410	$165,015	$248,341

CITATION:	2009 TCC 1
COURT FILE NO.:	2006-3362(IT)G
STYLE OF CAUSE:	WALTER STURZER v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	May 12, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Paul Bédard
DATE OF JUDGMENT:	January 8, 2009

APPEARANCES:

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Counsel for the Respondent:	Benoît Mandeville

COUNSEL OF RECORD:

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