Docket: 2008-2778(IT)G

BETWEEN:

DANIEL DOMPIERRE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on April 19, 2010, at Ottawa, Ontario.

Before: The Honourable Justice Gaston Jorré

Appearances:

Counsel for the appellant:	Paul Fréchette
Counsel for the respondent:	Sara Chaudhary Frédéric Morand

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the assessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

(a) the appellant's income for 2002 is to be decreased by $1,263;
(b) the appellant's income for 2003 is to be decreased by $2,468;
(c) the appellant's income for 2004 is to be decreased by $1,673;
(d) the penalties under subsection 163(2) are to be adjusted accordingly.

Since the appellant's success is limited, the appellant shall pay the respondent's costs.

Signed at Ottawa, Ontario, on this 31st day of October 2011.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 23rd day of December 2011.

Erich Klein, Revisor

Citation: 2011 TCC 509
Date: 20111031
Docket: 2008-2778(IT)G

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DANIEL DOMPIERRE,

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and

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Respondent.

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REASONS FOR JUDGMENT

Jorré J.

Introduction

[1] The appellant is appealing from assessments dated February 23, 2007, for the 2002, 2003 and 2004 taxation years.

[2] The appeal was heard under the *Tax Court of Canada Rules (General Procedure)*. The original version of these reasons is in French.

[3] The Minister of National Revenue (the Minister) added to the appellant's income the amounts of $3,274 for 2002, $20,801 for 2003 and $13,862 for 2004. The Minister also imposed penalties for gross negligence under subsection 163(2) of the *Income Tax Act* (ITA).

[4] The Minister estimated the appellant's income using the "net worth" method. He attributed this income estimated through the net worth method to three different sources, namely:

(a) in very large part, the appellant's fishing hut rental business;
(b) in part, unreported rental income; and
(c) in part, an unreported capital gain related to the sale of his share in a hunting camp.

[5] At the beginning of the hearing, the appellant informed the Court that he was disputing the following aspects of the net worth determination:

(a) rental income other than the amounts reported in the appellant's income tax returns;
(b) the capital gain, since, according to the appellant, although he sold a hunting camp, the adjusted cost base was such that there was no gain;
(c) the inclusion of any profits from the seasonal fishing hut rental business because, according to the appellant, that business belongs to his two sons and not to him;
(d) the fact that the net worth determination does not take into account a lump sum payment of about $41,000 that the appellant received from the Quebec Commission de la santé et de la sécurité du travail (CSST) in 2001;
(e) the fact that the personal expenses estimated by the Minister are too high; and, lastly,
(f) the fact that the respondent did not take into account expenses for the fishing hut rental business totalling $6,656 for 2002, $8,953 for 2003 and $15,456 for 2004.[1]

[6] There is a contradiction between paragraphs 5(c) and (f). If the appellant is not the owner, he cannot deduct expenses of his children's business that he paid because the payments would be gifts or loans that he made to his children.[2]

[7] Later on in the hearing, the appellant claimed that there was another error in the net worth determination: the respondent apparently did not take into account that the appellant had sold a truck to his son for $10,000 in 2004.

The facts

[8] The appellant, his two sons (Frédéric Dompierre and Bruno Dompierre) and Pierre Marinier from the Canada Revenue Agency testified.

[1] At the beginning of the hearing, the appellant also claimed that the Minister should not have included insurance proceeds of $6,240 shown in the 2004 column of Appendix III of the Reply to the Notice of Appeal. This claim seems to have been dropped, no doubt because it is a deduction that benefits the appellant.

[2] If the appellant paid expenses of his children's business, he would not be able to deduct those amounts because he would not have incurred them in order to earn income. However, if he can demonstrate that his children repaid those expenses, it would be appropriate to revise the net worth determination. See below.

[9] Before the period at issue, the appellant worked at the paper mill in Gatineau. He had an industrial accident which required in three surgeries, and, as a result, he receives workmen's compensation benefits from the CSST.

[10] That compensation was approximately $27,000 for 2002, $34,000 for 2003 and $32,000 for 2004.

[11] The appellant testified that [TRANSLATION] "the Quebec Commission des lésions professionnelles took me off the job market".[3]

[12] There is no disagreement as to the existence of a seasonal fishing hut rental business. According to the appellant, that business belonged to his two sons, while according to the respondent, it belonged to the appellant.

[13] The sum total of the appellant's evidence in this regard is that the business never kept any accounting records.[4] Neither the appellant nor his sons included income from the business in their income tax returns.

[14] The additional income determined by the respondent in the assessments was calculated by the net worth method. There were no calculations, as such, of the income from the fishing hut business.

[15] The Minister concluded that part of the additional income calculated by the net worth method came from the appellant's selling of his share in a hunting camp because he had obtained information that the appellant had sold that share for $5,000.

[16] The effect of that sale is not an increase in the additional income calculated[5] but rather a $2,500 reduction in the additional income estimated by the net worth method.[6]

[17] As for the additional income from rent payments, the Minister concluded that some cheques deposited in the appellant's account were from the tenant and represented rent payments. Consequently, he concluded that the difference between

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[3] Transcript, page 36, lines 7 to 23.

[4] The failure to keep books and records is contrary to subsection 230(1) of the ITA:

> Every person carrying on business . . . shall keep records and books of account (including an annual inventory kept in prescribed manner) . . . in such form and containing such information as will enable the taxes payable under this Act . . . to be determined. . . .

Potentially, such failure could give rise to penalties under paragraph 165(5)(*b*) or even to an offence under subsection 238(1).

[5] The Minister presumed that the amount of $5,000 was already reflected in the net worth calculations.

[6] That is, by the $2,500 non-taxable portion of the gain, because the Minister presumed that the acquisition cost of the appellant's share was $0. See adjustments in Appendix III of the Reply to the Notice of Appeal.

the total of these cheques and the rent included in the appellant's income was additional income from rent payments.

[18] The amount the Minister attributed as income from the fishing hut rental business is simply the amount of additional income calculated by the net worth method after deducting the amounts attributed to additional rent and to the sale of the appellant's share in the hunting camp.

Who owns the fishing hut rental business?

[19] The appellant and his two sons testified that the business belonged to the appellant's sons. In support of this testimony, there is a contract of sale between Roland Létang and the two sons whereby the latter bought 25 fishing huts from Mr. Létang for $6,000.[7]

[20] However, it can be seen that there were changes to the dates on which the purchasers were to make the payments and that those changes are initialled "R.L" and "D.D." for Daniel Dompierre, the appellant.[8]

[21] It was the appellant who made the payments for the huts. At best, his sons reimbursed him only very partially.[9]

[22] As I indicated earlier, neither the appellant nor his sons reported income from that business in their income tax returns.

[23] In order to operate, the business had to lease land from the City of Gatineau. The only document filed in evidence with regard to that is a lease signed on December 6, 2005, between the City of Gatineau and the appellant as the lessee.[10] According to the appellant, his sons signed a similar lease with the City in 2002, but he had signed such leases with the City in 2003 and 2004.[11]

[24] The appellant managed the business.[12] During the busiest period, he could work many hours.[13]

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[7] Exhibit A-1, Tab 7.
[8] Transcript, page 29, line 24, to page 30, line 9.
[9] Ibid., page 30, lines 11 to 23; page 119, lines 8 to 19; page 129, lines 9 to 11.
[10] Exhibit A-1, Tab 11.
[11] It can be seen as well that the auditor accepted the appellant's claim that he had received from the City in 2002 and 2004 a non-taxable reimbursement of a security; see Appendix III of the Reply to the Notice of Appeal, at the line reading [TRANSLATION] "Reimbursement of security for ice fishing business", as well as the second and eighth pages of Exhibit I-1, Tab 7, and the eleventh and twelfth pages of Exhibit I-1, Tab 8.
[12] Transcript, page 38, line 24, to page 39, line 2; page 86, lines 1 to 4; page 102, lines 14 to 19; page 130, lines 4 to 6.

[25] According to the appellant, the work he did for the business was volunteer work.

[26] One finds, among the documents provided by the appellant,[14] a [TRANSLATION] "Baitfish Permit". This permit was issued in the appellant's name.

[27] When the fishing huts were sold in 2006, it was the appellant who signed the receipt for the payment of $1 for the sale of approximately 30 fishing huts.[15]

[28] The first page of Exhibit I-3[16] indicates "Daniel Dompierre" as the business's name and gives the appellant's address as the business's address. The second page indicates that the nature of the business was [TRANSLATION] "ice fishing, fishing hut rental, sale and rental of fishing equipment/seasonal activity 2003/12/22 to 2004/03/22". Finally, on the last page of that Exhibit, it can be seen that the appellant and his two sons are shown as the business's owners

[29] For various reasons, I cannot accept the appellant's evidence on this point.[17]

[30] Considering, among other things, the involvement of the appellant, who contributed a significant amount of time and money to the business, who acted as manager of the business and who is mentioned more often than his sons in the documents I have just described, and considering the fact that it is illogical for a manager who is not an owner to sign a lease with the City and the fact that his sons hardly contributed at all to purchasing the huts,[18] I can only conclude that he was the owner.[19]

[31] Another reason that leads me to that conclusion is that it was the appellant who received the profits from the fishing hut rental business.[20]

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[13] Ibid., page 92, line 24, to page 93, line 7. It is not possible to determine from these responses a precise number of hours, but it is clear that the appellant's involvement is not minor. This significant involvement is also seen when comparing, overall, the appellant's testimony to that of his sons: the appellant is clearly the most involved and as the best informed of the business's activities.

[14] Exhibit A-1, Tab 16, page 122.

[15] Ibid., Tab 12.

[16] Document that the appellant gave to the auditor (transcript, page 179, lines 23 to 25).

[17] For example, I have difficulty believing that Bruno Dompierre would have no recollection of events leading up to the purchase of the huts if he had been a co-owner (transcript, page 128, lines 18 to 24).

[18] Particularly given that it is the lessee who undertakes to comply with clauses 5 to 8 of the lease, including clause 7, which provides that the lessee may not assign his rights or sublet.

[19] Although the appellant asked the auditor whether he had considered the possibility that his two sons and he are all owners of the business, the auditor did not make any observations regarding this.

[20] The conclusion reached in the rest of these reasons is that, except for a few relatively small changes, the Minister was correct in adding relatively significant amounts to the appellant's income. Since the appellant did not testify that he had other employment or another business, since his sons did not report any profit from the business and since they did not

[32] However, in the circumstances of this case, for reasons that I will explain below, the result would be the same even if the appellant were not the owner. See paragraphs 40 to 44 below.

Business expenses

[33] The appellant contends that the respondent should have taken into account expenses for the fishing hut rental business totalling $6,656 for 2002, $8,953 for 2003 and $15,456 for 2004.

[34] In support of this claim, the appellant submitted a series of photocopies of receipts that were categorized by year.[21]

[35] For the following reasons, I do not believe the appellant when he claims that he incurred these expenses for the business.

[36] These copies of receipts were filed without any testimony or documents explaining the nature of each expense or the connection between the expense and an activity of the business. The appellant's testimony on this is essentially as follows:

> [TRANSLATION]
> Mr. FRÉCHETTE:
>
> Q. Okay. Now, Exhibit A-18, Tab 18. They are the business expenses for 2004, totalling 15,456 dollars and 39 cents.
> Mr. Dompierre, are these the expenses related to your business or not?
> A. Yes. Yes, yes.[22]

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testify that they had received profits from the business, the increase in the appellant's income estimated by the net worth method must have come from the fishing hut rental business. Since the appellant kept those amounts and his sons reported no net business income, I find that the appellant kept those amounts because he was the owner and the profits belonged to him.

[21] That is, all of the receipts at Tabs 16, 17 and 18 of Exhibit A-1. The respondent accepted a small part of the expenses (Exhibit I-1, Tab 10, page numbered FT-8950-23).

[22] See page 48 of the transcript, where the appellant's full testimony on the subject before the cross-examination can be found (except for the question and answer already quoted):

> Q. Okay. Why are they - aren't they associated with a particular person most of the time, or sometimes with your name: Dompierre?
> A. Lack of knowledge. Because of lack of knowledge.
> Q. Lack of knowledge of what?
> A. Yes.
> Q. Could you explain?
> A. Well, if I'd known what I know now, I would have done things differently. I would have kept books; I would - I mean - I would have demonstrated to the Court - today, we would not have had to spend the day explaining, spend half an hour on receipts. I would have shown the Court that, on paper, I have nothing to be ashamed of. Do you understand? But that is not the case.

[37] In cross-examination, the appellant admitted that there might have been one or two invoices that had slipped in among the copies and that had nothing to do with the business.

[38] In addition, a review of the receipts filed in evidence showed the following:

(a) There are numerous receipts for gasoline and other vehicle-related expenses, but there is absolutely nothing in the evidence that would allow one to determine what vehicles were used in the business or the percentages of business use and personal use.
(b) There are many receipts
    (i) for which it is impossible to determine, from the receipt, the nature of the purchase,[23] and
    (ii) that are either barely legible or illegible.[24]
(c) In the absence of any explanation, when the nature of the purchase appears on the receipt, one must guess at the connection between the purchase and the business.[25]
(d) There is at least one instance where the same receipt appears twice.[26]
(e) In one case, the receipt indicates a reimbursement to the appellant.[27]
(f) There are some things that cannot be connected to the business.[28]

[39] The appellant did not convince me that he had incurred the expenses claimed in order to earn income.

[40] In the circumstances of this case, even if the appellant was not the owner, that fact would not change much of anything.

[41] If the appellant was not the owner, even if he paid expenses related to the fishing hut rental business, the amounts paid would not be deductible as the appellant would not have incurred the expenses in order to earn business income. The amounts would be loans or gifts that he made to his sons.

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[23] Exhibit A-1, Tab 16, page 120, receipt 42, for example (on which the first item is described as "6X5 INC/RE").
[24] Ibid., Tab 18, page 226, receipt 186, for example.
[25] Ibid., Tab 17, page 150, receipt 82, for example.
[26] Ibid., Tab 18, page 218, receipt 177; this receipt is the same as receipt 176 on the same page.
[27] Ibid., Tab 18, page 231, receipt 195.
[28] Ibid., page 100, receipt 10; page 104, receipt 14 (for a "WHITE TANGO 3-PCE SHWR W/LH SEAT & ROOFCAP" and a "CHROME SHOWER DOOR FOR TANGO", among other things; page 183, receipt 128.

[42] Such expenses or gifts would have to be funded from the appellant's income or assets, and it is entirely logical to include them in personal expenses in estimating the appellant's income by the net worth method.

[43] If the appellant were not the owner, in order for such expenses to result in a decrease in the income estimated by the net worth method, all of the following conditions would have to be met:

(a) It would, as is the case for an owner, have to be demonstrated that the expenses were indeed related to the fishing hut rental business.
(b) It would also have to be demonstrated that the amounts were loans, not gifts.
(c) It would have to be demonstrated that, throughout the year, the business (that is, his sons, if it was his sons' business) repaid the appellant the amounts that he had paid for the business's purchases.

If these conditions are met, as long as the appellant was repaid, the incurred and repaid expenses would have to be removed from the personal expenses estimate used in the net worth calculations.

[44] Since the first condition is not met, the expenses would not be deductible even if the appellant were not the owner of the business.[29]

The CSST payment in 2001

[45] I accept that the appellant received a sum of over $41,000 from the CSST in 2001. However, since the year 2001 is not at issue before this Court, all that matters is whether there are errors in the net worth calculations at December 31, 2001.

[46] The appellant acknowledged that he had spent a significant part of that $41,000 in 2001. The balance at December 31, 2001, in one of his accounts with the caisse populaire, was included in the net worth calculations.[30]

[47] There is nothing in the evidence to suggest that the appellant's net worth at December 31, 2001, was greater than that calculated by the Minister.

[48] Consequently, the fact that he received a sum of money from the CSST has no impact on the net worth calculations.

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[29] It was not proven that the other two conditions were met.
[30] Transcript, pages 57 and 58.

Personal expenses

[49] The appellant challenged the personal expenses found in Appendix IV of the Reply to the Notice of Appeal. According to the appellant, those amounts (around $19,000 for 2002, $20,000 for 2003 and $21,000 for 2004) are too high.

[50] The amounts are based on information obtained by the auditor from the appellant and on Statistics Canada's averages.

[51] However, the auditor explained that, after analyzing deposits into the appellant's bank account and bank account withdrawals, he had concluded that the amounts in Appendix IV were much too low, and he used the analysis of withdrawals to estimate personal expenses.[31]

[52] Consequently, Appendix IV was not used to calculate the net worth.[32]

[53] The amounts based on the analysis of withdrawals appearing under [TRANSLATION] "Personal Expenses" in Appendix III of the Reply to the Notice of Appeal are $70,661 for 2002, $54,315 for 2003 and $61,207 for 2004.[33]

[54] Since the appellant did not demonstrate that there were errors in the calculation of the withdrawals and since I did not accept the evidence with respect to the business expenses that the appellant claims to have incurred (see above), there is no need to make any changes to the personal expenses.

Sale of the truck for $10,000 in 2004

[55] The appellant did not testify concerning the sale of the truck.

[56] He did, however, cross-examine the auditor on that sale. The auditor replied that, since there were no documents, he was not satisfied that such a sale, had taken place, and that, consequently, he did not take it into account.

[57] In replying, the auditor referred to one of his conclusions on the last page of Tab 7, Exhibit I-1 (document dated May 9, 2006); therefore, the discussion on this subject between the auditor and the appellant took place before May 9, 2006.

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[31] See Exhibit I-1, especially Tabs 7, 8 and 10. Those documents were on the respondent's list of documents.
[32] Which means that Appendix IV has no effect on the net worth.
[33] In the analysis of withdrawals, the Minister took out some amounts, which he accepted as being expenses incurred by the fishing hut rental business (Exhibit I-1, Tab 10, page numbered FT-8950-23).

[58] It is surprising that the appellant did not testify or file documents concerning the sale of the truck, considering that there had been disagreement on this issue ever since the audit and that a sale of a vehicle generates a certain amount of paperwork — for insurance purposes, among other things.

[59] Although the appellant did not testify on this matter, it can be seen in the auditor's conclusion to which I have just referred that the auditor noted that the taxpayer's position was that the sale of the truck had been reflected in the $10,000 deposit made on April 26, 2004,[34] in one of his accounts with the caisse populaire.

[60] In rebuttal, the appellant called as witness Frédéric Dompierre, who stated that he had bought a truck from his father for $10,000. He was not sure of the year, but believed that it was in 2004.

[61] Frédéric Dompierre testified as follows:

> [TRANSLATION]
>
> Q. Mr. Dompierre, you heard Mr. Marinier speak of 10,000 dollars for a truck. Do you have anything to say about that?
>
> A. The purchase of the truck: my father gave me a receipt as well. I transferred the 10,000 dollars into his account from my account.
>
> Q. Was this a long time ago?
>
> A. Yes. It has been - I bought it - what year was it? 2004, I believe.
>
> Q. 2004?
>
> A. I'm not sure. But I have the papers.[35]
>
> . . .
>
> Q. How did you pay for it?
>
> A. By putting money in his account. I made the transfer at the same caisse, from my account; I don't know the account number by heart; I deposited the money into my father's account, through the caisse.[36]

[62] Frédéric Dompierre did not bring the documents relating to the purchase of the truck with him to the hearing, although he testified that he had at home a receipt that his father had given him.

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[34] Exhibit I-1, Tab 7, page numbered FT-8900-8, and Tab 24, page numbered FT-9210-32 (marked with the letters "DSL").
[35] Transcript, page 210, line 15, to page 211, line 2.
[36] Ibid., page 212, lines 15 to 21.

[63] In Appendix I of the Reply to the Notice of Appeal, on the first page of the list of personal assets, one sees that there are four vehicles that belong to the appellant: a 1997 Ford pickup, a 1979 Ford F250, a 1988 Ford COF and a 1986 Ford pickup.

[64] According to that list, the appellant owned these four vehicles during the entire period.

[65] The appellant did not directly dispute this.[37] So, unless a truck is missing from the asset list,[38] it must be one of these four trucks that was sold, but which one?

[66] Frédéric Dompierre did not describe the truck he purchased.

[67] The documents show that the appellant still owned the 1988 Ford COF in December 2004,[39] and that he still owned the 1997 Ford pickup on April 30, 2004.[40]

[68] If the son purchased one of the vehicles on April 26, 2004, it could only have been the 1979 Ford F250 or the 1986 Ford pickup.

[69] I cannot believe that the son would have paid $10,000 on April 26, 2004, for a 1979 or 1986 vehicle (which would have been about 25 years old in one case and 18 in the other).

[70] Consequently, I find that the appellant did not sell a vehicle for $10,000 in 2004.

Rental income

[71] According to the appellant, the respondent was wrong in assessing additional rental income amounts of $1,263 for 2002, $1,398 for 2003 and $1,673 for 2004.

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[37] Ibid., page 8, line 8, to page 9, line 4 (where the appellant's only comment about the assets is that an amount received from the CSST was not indicated).

[38] Which the appellant did not claim to be the case.

[39] The vehicle number for which is 2FTHF26H3JCA29626 (Exhibit A-1, page 233, receipt from the SAAQ dated "2004-12-06").

[40] This conclusion can be drawn from an examination of Exhibit A-1: on page 181, there is an SAAQ receipt, which shows that the vehicle number for the 1979 Ford F250 is F265CFC60925 and that the vehicle number for the 1986 Ford pickup is 2FTEF26NOGCB93062. On page 204, there is a receipt dated "2004-04-30" for the plate renewal for vehicle number JY4AJ02W6YA039960.

Since the vehicle number for the vehicle whose plates were renewed by the appellant on April 30, 2004, is different from the vehicle numbers for the 1988 Ford COF (see previous note), the 1979 Ford F250 and the 1986 Ford pickup, and since the appellant did not allege that he owned another vehicle during the period in question, the vehicle whose plates were renewed on April 30, 2004, must necessarily be the 1997 Ford pickup. If the appellant renewed the plates in his own name on April 30, 2004, he could not have sold the vehicle on April 26, 2004.

[72] The appellant testified that, although he deposited the tenant's old age pension cheque, he handed over to the tenant in cash the difference between the amount of that cheque and $600.

[73] I accept the appellant's testimony in this regard. That means that a part of the amount of the withdrawals was used to reimburse the tenant the difference between the amount on the cheque and the rent. Consequently, the amount of personal expenses must be reduced by the total amount the tenant was reimbursed. The practical result is that the appellant's income will be decreased by $1,263 for 2002, $1,398 for 2003 and by $1,673 for 2004.

Hunting camp

[74] The appellant testified that he had initially paid $1,250 for his share in the hunting camp; the other three purchasers also paid $1,250 for the camp. He also testified that, later, two of the other three had sold their shares and that he had purchased another share for $1,250, which is to say that he paid a total of $2,500 for his share in the hunting camp.

[75] He also testified that he had incurred other expenses because the owners of the camp had enlarged it, but he gave no details.

[76] I accept that the hunting camp cost $2,500. The following changes must therefore be made to net worth for 2003. On the one hand, there will be a $2,500 deduction to take into account the cost of the camp; on the other hand, the deduction that the auditor allowed for the non-taxable portion of $1,250 will have to be decreased.

[77] Accordingly, the practical result is a $1,250 decrease in income for 2003.

Penalties under subsection 163(2) of the ITA

[78] Although the appellant did not directly dispute the penalties, I will nonetheless briefly consider this issue. Subsection 163(2) provides the following:

> (2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made . . . a false statement or omission in a return . . . .

[79] The burden of proof with respect to the penalties is on the Minister, and

> . . . "[g]ross negligence" must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence

> tantamount to intentional acting, an indifference as to whether the law is complied with or not. . . .[41]

[80] During the three years in question, the appellant operated a business, but he never kept accounting records and never included one cent of income from that business in his income tax returns.

[81] During the three years at issue, the appellant failed to report over $32,000 of his income, including more than $18,000 for 2003. In other words, the appellant reported about $36,000 or $37,000 per year;[42] the total unreported amount over the three years is almost equal to the amount that he reported annually during this period.

[82] Given these facts, I do not see how I could make any other finding than the following: the appellant knew that he had not included all of his income.

[83] Accordingly, there was gross negligence and the penalties are justified.

[84] The penalties will obviously have to be adjusted to take into account the decreases in income with respect to rent and the hunting camp.

Conclusion

[85] Accordingly, limited changes should be made to the assessments.

[86] The appeal is allowed and the matter will be referred back to the Minister for reconsideration and reassessment on the basis that

(a) the appellant's income for 2002 is to be decreased by $1,263;
(b) the appellant's income for 2003 is to be decreased by $2,648;
(c) the appellant's income for 2004 is to be decreased by $1,673;
(d) the penalties under subsection 163(2) are to be adjusted accordingly.

[87] Since the appellant's success is rather limited in relation to the total assessed, the appellant shall pay the respondent's costs.

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[41] According to Justice Strayer in *Venne v. Canada*, [1984] F.C.J. No. 314 (QL).
[42] $34,445 for 2002, $38,732 for 2003 and $37,089 for 2004 (Exhibit I-1, Tabs 1, 2 and 3, line 150 of the appellant's income tax returns).

Signed at Ottawa, Ontario, this 31st day of October 2011.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 23rd day of December 2011.

Erich Klein, Revisor

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PLACE OF HEARING:	Ottawa, Ontario
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DATE OF JUDGMENT:	October 31, 2011

APPEARANCES:

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Counsel for the respondent:	Sara Chaudhary Frédéric Morand

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