Docket: 2016-2104(IT)I

BETWEEN:

ABDULRASHEED ISAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 23, 2017, at Toronto, Ontario

Before: The Honourable Justice B. Russell

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	John Chapman

JUDGMENT

The appeal from the three reassessments raised April 8, 2013 under the *Income Tax Act* (Canada) for the Appellant's 2009, 2010 and 2011 taxation years respectively is dismissed, without costs in accordance with the attached reasons for judgment.

Signed at Toronto, Ontario, this 31st day of January 2018.

"B. Russell"

Russell J.

Citation: 2018TCC28
Date: 20180131
Docket: 2016-2104(IT)I

BETWEEN:

ABDULRASHEED ISAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Russell J.

Introduction:

[1] In this matter the Appellant Abdulrasheed Isah has appealed under the *Income Tax Act* (Canada) (Act), having elected the informal procedure, three reassessments of his 2009, 2010 and 2011 taxation years respectively. The appealed reassessments were each raised April 8, 2013 and upon being objected to were confirmed June 12, 2015 by the Minister of National Revenue (Minister); hence this appeal.

Pleadings:

[2] The Notice of Appeal of the self-represented Appellant shows that the focus of the appeal is on disallowed charitable deductions claimed in each of the Appellant's three returns for the three taxation years. In the Amended Reply of the Respondent, the Minister's assumptions were pleaded, particularly including:

a) for the 2009 taxation year he had claimed charitable donations of $5,045; in actuality only $45 was donated to a registered charity; he did not transfer any other property to any registered charity in this taxation year; he did not file with the Minister receipts containing prescribed information for any donations allegedly made to *World Vision Canada* (World Vision) and to *Heart and Stroke Foundation of Canada* (Heart & Stroke), or to any other

registered agency; he had employment income of $47,934; he claimed various employment expenses although he was not ordinarily required to perform duties of employment away from his employer's place of business;

b) for the 2010 taxation year he had claimed charitable donations of $7,996; in actuality he did not transfer any property to any registered charity in this taxation year; he did not file with the Minister receipts containing prescribed information for any donations allegedly made to World Vision and to Heart and Stroke, or to any other registered agency; he had employment income of $56,442; he claimed various employment expenses although he was not ordinarily required to perform duties of employment away from his employer's place of business;

c) for the 2011 taxation year he had claimed charitable donations of $4,998; in actuality he did not transfer any property to any registered charity in this taxation year; he did not file with the Minister receipts containing prescribed information for any donations allegedly made to World Vision and to Heart and Stroke, or to any other registered agency; he claimed gross business income of $1,150 and business losses of $10,334; he did not have a source of business income at any time during the taxation year.

Evidence:

[3] At the hearing the Appellant testified in direct that he trusted his tax return preparer and thought everything was alright. In cross-examination he stated that he had not had a business and did not have employment expenses. The only issue is the charitable donations deductions (thereby including the "gross negligence" penalty of $721 assessed in relation to the 2011 taxation year purported donations). He testified he gave his tax return preparer money for charitable donations and a fee to prepare his returns for each of three taxation years in issue. He testified his work colleague Elvis in 2009 referred him to this tax return preparer, with name (or approximate name) of Kizitto (Mr. K). His office was in North York, near Jane and Finch. Mr. K cannot now be located. The Appellant trusted Elvis that Mr. K was a good tax return preparer, although without knowing what tax knowledge Elvis had. The Appellant's previous tax return preparer, who had charged $40 to $50 annually for this service, had died.

[4] The Appellant further testified in cross-examination that Mr. K never gave him charitable donation receipts. He cannot remember how much cash he actually gave, but thinks he gave Mr. K roughly $500 to $700 for donations in each year

plus a fee of $50 to $60. The Appellant came to Mr. K's office to sign his returns for each of the 2009, 2010 and 2011 taxation years (thus in 2010, 2011 and 2012). They were approximately five minute visits. He wanted to donate because of hospital care his daughter had received in earlier years. He chose to do so through this method of giving money to Mr. K, for Mr. K ostensibly to use in making charitable donations on the Appellant's behalf. The Appellant did not check his 2009 tax return page by page before signing it. He did not give Mr. K $2,982.64 for donation to Heart & Stroke or $2,017.36 for donation to World Vision for his 2009 taxation year - this despite the Appellant's acknowledgment on cross-examination that there are two donation receipts in his 2009 return (Ex. R-1) from these institutions respectively for these amounts.

[5] Likewise for his 2010 taxation year he admits he did not give the amounts claimed in his 2010 return (Ex. R-2) as donations to World Vision ($3,998.45) or Heart & Stroke ($3,997.80). He did not look through the tax return page by page before signing it. He did not see these charitable donation claims. He trusted Mr. K. Again for the 2011 taxation year he agrees he did not make any donations as indicated in the return (Ex. R-3) to Heart & Stroke ($2,464.08), and to World Vision ($2,533.86). He did not review the whole return before signing it.

[6] The Appellant received each year into his bank account the tax refunds generated by these claims for purported charitable deductions. The first he knew something may be wrong was when he received a Canada Revenue Agency (CRA) letter dated March 1, 2013 questioning the validity of his 2011 charitable donations and claim for self-employment loss in 2011, and also his claims for employment expenses for 2009 and 2010. He took this to Mr. K who filled in the questionnaire for him and the Appellant signed it without reading it. The Appellant was reassessed for the returns as CRA had proposed and then he stopped using Mr. K and in any event could no longer find him. Lastly in cross-examination the Appellant acknowledged that he did not give Mr. K the full amounts claimed as donations in the returns. Nor did he personally follow up with the charities to confirm donations had been made. So he would not know if no money had gotten to them. This was despite by then he knew CRA had an issue with the veracity of the claimed deductions.

[7] The Respondent called Mr. Donald Mitchell as a witness. He is Controller - Director of Corporate Finance for World Vision. His evidence was that he had personally searched the donation data of World Vision and advises that the donation numbers showing on the World Vision receipts appearing in the returns under the Appellant's name are numbers utilized for one or other accounts (donors)

in different cities. Both accounts (donors) and cities differ from the Appellant's identity and city of residence. Similarly, Ms. Karen Brown, Co-ordinator Donor Services of Heart & Stroke was called by the Respondent. Her testimony was that she had caused a search of that institution's records leading to her conclusion that none of the Heart & Stroke receipts in evidence showing the Appellant's name appeared to be genuine. The Appellant did not cross-examine either of these two witnesses.

Submissions:

[8] In argument the Respondent led, submitting that the Appellant had no receipts of his own and he had disavowed the charitable receipts as filed with his returns. Despite vagueness of the Appellant's evidence the Respondent accepts there was a tax return preparer, i.e. that Mr. K actually existed. As to the subsection 163(2) penalty the question was whether the Appellant was negligent or grossly negligent. Per *Venne v. R.*, 84 D.T.C. 6247 (FCTD), gross negligence is something more than failure to take reasonable care. Was there any actual knowledge or wilful blindness on part of the Appellant. The Respondent submits the Appellant knew what he was doing or he was wilfully blind. The Appellant's submission essentially was that he had been duped by a person he trusted.

Issues:

[9] The issues are whether the 2009, 2010 and 2011 appealed reassessments' denial of claimed donations are correct, and whether the gross negligence penalty applied to the Appellant's 2011 taxation year is correct.

Analysis:

[10] It readily appears from the un-contradicted evidence brought by the Respondent that the World Vision and Heart & Stroke donations purportedly made by or on behalf of the Appellant for his 2009, 2010 and 2011 taxation years had in fact not been made. The evidence of Mr. Mitchell of World Vision and Ms. Brown of Heart & Stroke establish that the donation receipts that the Appellant's tax return preparer Mr. K had included in the Appellant's returns for those three years, ostensibly from those two respected charitable institutions, were fictitious. As well, the Appellant made no effort to deny that these donation claims were falsely made. He was forthright in saying he never gave the tax return preparer Mr. K funds in the amounts fraudulently claimed as deductions, to gift on his behalf to World Vision and Heart & Stroke. I add that while he knows now of these fraudulent

claims, it has not been established that the Appellant had actual knowledge of these wrongful claims at the times they were advanced. But in whole I find that the Minister's appealed reassessments denying these claimed charitable donations are correct.

[11] I now turn to the subsection 163(2) penalty assessment of $721 for his 2011 taxation year. This penalty is in the amount of one half of the tax sought to be avoided for a person who, "knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return…". I note also that for this penalty the burden of proof is upon the Respondent (subsection 163(3)).

[12] In *Venne, supra,* Justice Strayer stated para. 37 that:

> …'Gross 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. I do not find that high degree of negligence in connection with the misstatements of business income. To be sure, the plaintiff did not exercise the care of a reasonable man and, as I have noted earlier, should have at least reviewed his tax returns before singing them. A reasonable man in doing so, having regard to other information available to him, would have been led to believe that something was amiss and would have pursued the matter further with his bookkeeper.

[13] The Court continued, at para. 38:

> With respect to business income, I can more readily recognize that effective surveillance would have been difficult for the plaintiff and would have involved him making and reviewing numerous computations of revenues, expenditures, assets, and liabilities. In other words the errors in business income, small in some years but very substantial in others, would not necessarily have 'sprung out' at a person of the taxpayer's background and abilities. While it may have been naive for him to trust his bookkeeper as knowing more about such matters than he did, I do not think it was gross negligence for him to fail to challenge the bookkeeper with respect to business computations. However egregious the errors committed by the bookkeeper in this respect, it is quite conceivable that they were not in fact noticed by the plaintiff and his neglect in not noticing them fell short of constituting gross negligence...

[14] This language from this early "gross negligence" decision, probably being the decision most cited in respect of subsection 163(2) penalties, is helpful. When does not reviewing a tax return before signing it constitute gross negligence and

when might it not? The answer from *Venne* is, if the false statements in the return would "spring out" upon review, keeping in mind the background of the taxpayer, then not reviewing the return likely would constitute gross negligence. (If, for example, the false statements in a return were "legal gobbledigook" (which is not the case here) then while their meaninglessness could well "spring out" to someone with elements of legal training or work experience, that would not necessarily be so for someone lacking such background. Or there might be some other unique circumstance in the relevant factual matrix that renders excusable to some lesser or greater extent the trusting of, in hindsight, an unscrupulous tax return preparer. Each case is unique. The gross negligence penalty is a serious penalty, applicable in situations of or tantamount to intentionally made false statements, through act or omission.)

[15] In this case however the mis-statements in the 2011 return are the claims for deduction for charitable donations to World Vision and to Heat & Stroke in the respective amounts of $2,533.86 and $2,464.08. I do not think the Appellant, who represented himself in this matter, would have had a problem in spotting these wrong amounts if he had taken time to review the return (as he said he did not) before signing it. I think that these two false statements would have been obvious to him, as they would have been to almost anyone in reviewing that return. The Appellant was completely aware that he had had no intention of donating any such amounts to these two charitable institutions.

[16] Accordingly I do find that the Respondent has met its burden of proof, through cross-examination of the Appellant, that the false statements in the return as established by the evidence of Mr. Mitchell and Ms. Brown, were made, participated in, assented to or acquiesced in through gross negligence of the Appellant.

[17] In concluding, and as a separate matter entirely I note that the Appellant is unhappy that he was assessed interest in the appealed reassessments. I believe at the hearing I advised that interest relief was not a matter over which this Court has jurisdiction (unless the wrong interest rate was used or otherwise a wrong calculation of the interest was made, thereby affecting the balance of the appealed (re)assessment). Rather, it is the Minister per subsection 220(3.1) of the Act who has discretionary jurisdiction to waive or cancel interest (and penalties), with right of judicial review of these discretionary decisions to the Federal Court per section 18.1 of the *Federal Courts Act*.

[18] I dismiss this informal procedure appeal, without costs.

Signed at Toronto, Ontario, this 31st day of January 2018.

"B. Russell"

Russell J.

CITATION:	2018TCC28
COURT FILE NO.:	2016-2104(IT)I
STYLE OF CAUSE:	ABDULRASHEED ISAH AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	August 23, 2017
REASONS FOR JUDGMENT BY:	The Honourable Justice B. Russell
DATE OF JUDGMENT:	January 31, 2018

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	John Chapman

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada