

Docket: 2012-963(IT)I

BETWEEN:

DENISE JACK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on November 28, 2012, at Edmonton, Alberta.

Before: The Honourable Gerald J. Rip, Chief Justice

Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       Paige Atkinson

---

**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed.

Signed at Ottawa, Canada, this 3rd day of January 2013.

"Gerald J. Rip"  
\_\_\_\_\_  
Rip C.J.

BETWEEN:

DENISE JACK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR JUDGMENT**

Rip C.J.

[1] Denise Jack appeals from an income tax assessment for 2009 in which she was assessed a penalty pursuant to subsection 163(1) of the *Income Tax Act* ("Act")<sup>1</sup>. The facts are not in issue. Ms. Jack argues that the penalty ought to be vacated since she

---

<sup>1</sup> Subsections 163(1) and (3) of the *Act* read as follows:

163(1) Every person who  
(a) fails to report an amount required to be included in computing the person's income in a return filed under section 150 for a taxation year, and

(b) had failed to report an amount required to be so included in any return filed under section 150 for any of the three preceding taxation years

is liable to a penalty equal to 10% of the amount described in paragraph 163(1)(a), except where the person is liable to a penalty under subsection 163(2) in respect of that amount.

(3) Where, in an appeal under this *Act*, a penalty assessed by the Minister under this section or section 163.2 is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

163(1) Toute personne qui ne déclare pas un montant à inclure dans le calcul de son revenu dans une déclaration produite conformément à l'article 150 pour une année d'imposition donnée et qui a déjà omis de déclarer un tel montant dans une telle déclaration pour une des trois années d'imposition précédentes est passible d'une pénalité égale à 10 % du montant à inclure dans le calcul de son revenu dans une telle déclaration, sauf si elle est passible d'une pénalité en application du paragraphe (2) sur ce montant.

(3) Dans tout appel interjeté, en vertu de la présente loi, au sujet d'une pénalité imposée par le ministre en vertu du présent article ou de l'article 163.2, le ministre a la charge d'établir les faits qui justifient l'imposition de la pénalité.

exercised due diligence in preparing the tax returns. She does not dispute the amount of income added to her declared income.

[2] Ms. Jack is a registered nurse, teacher and small business owner. She holds a Master's degree in education. In 2008 she separated from her husband from whom she is now divorced and moved from the Toronto area to Edmonton. Prior to 2008, her former husband, a police officer, prepared and filed her income tax returns. Ms. Jack simply signed the returns prepared by her former husband without examining the returns or querying him on what he had prepared. The income tax returns for 2003, 2005 and 2006 for example were prepared and filed in this manner. In her income tax return for 2003, \$2,498 of employment income from a hospital was not reported, in her 2005 income tax return, amounts of employment income of \$1,697 and \$27,471 from two hospitals and interest of \$10 were not reported and in her 2006 tax return, employment income of \$515 and interest income of \$1,419 were not reported. She stated that during these years, she was fully occupied in getting an education — she attended school for nine consecutive years — and attending to her family that included two children. She admitted that even when she arrived in Edmonton in 2008, she "used to have bills stack up ... that I never even used to open and look at "because she was focused" on education.

[3] Since she knew, Ms. Jack said, that there were errors in prior tax returns and she had no knowledge how to file a tax return, she "took all forms" to H&R Block to prepare her 2008 tax return. She had earlier asked the tax authority for assistance. And again there were amounts of income missing from the return: \$12,166 of employment income from a nursing home, \$750 of employment income from the Alberta Government and \$12,417 of income from her registered retirement savings plan which she withdrew from her RRSP in 2008.

[4] Ms. Jack signed the 2008 tax return prepared by H&R Block, a hard copy of which was produced by the Crown. She "assume[s] she 'looked at it'", i.e. the tax return. She understood that the income reported on the return for 2008 was approximately what she had reported in previous years as at \$100,000, she stated, and, therefore, believed the information on the return was correct. In fact, she reported \$101,446.79 of income whereas she ought to have reported \$126,000 of income in 2008.

[5] As a result of the error incurred in the preparation of her 2008 tax return, Ms. Jack had her 2009 tax return prepared by Money Mart. She was well known at Money Mart, since, as a result of break up of her marriage and move to Edmonton, she regularly attended at Money Mart to borrow money for her household expenses.

[6] Ms. Jack testified that after bringing all her documents to Money Mart to prepare her return, she later returned to Money Mart to sign her return and pay for the preparation. "And that's when they told me my file was mixed up with someone else's file". Two weeks later she went back to Money Mart and signed "the forms they gave me. And when I asked them for a copy, they said that they do not give a copy of the income tax back to their clients." The evidence is not clear when Ms. Jack attended at Money Mart for the purpose of preparing her 2009 tax return. In her testimony, she believed these events took place in April 2010.

[7] According to the respondent's file, Ms. Jack's tax return for 2009 was filed electronically. What she appears to have signed was a single page authorization for Money Mart to file her return electronically.

[8] In fact, Ms. Jack did not attend at Money Mart to sign any documentation respecting her 2009 tax return before she received a letter, dated June 15, 2010, from Money Mart advising that:

Once we receive payment from you, we will file your tax return electronically with the Canada Revenue Agency (CRA) using the EFILE system. The enclosed copy of your Tax Return Summary is for your records.

and added payment of tax "must be paid on or before April 30".

[9] The Tax Return Summary referred to in the Money Mart letter was not attached to the letter, according to Ms. Jack, and she did not make any inquiries to Money Mart requesting a copy of the Tax Return Summary. The Money Mart letter provided a telephone number and email address if the client had any questions about his or her income tax return.

[10] M. Jack testified that she never saw, and thus did not review, the information described on her 2009 tax return. The document, the Authorization Form given to her for signature, was passed to her through a slot at the bottom of a security window. She simply signed the document and returned it through the slot.

[11] On July 6, 2010, Ms. Jack received a notice of assessment for 2009. The assessment appears to have agreed with the information on her tax return.

[12] Then, in November 2010, Ms. Jack said she received a letter from the Canada Revenue Agency ("CRA") informing her that her T4 from University of Alberta was

missing from her 2009 tax return and that they would be adding \$60,991 of employment income she received from the university in 2009 to her declared income. A penalty would also be assessed. She stated that since she had borrowed money at Money Mart, Money Mart knew that she was a teacher employed by the University and suggested Money Mart ought to have had this knowledge when preparing her tax return. She was silent as to whether Money Mart may have lost her T4 form, however.

[13] By notice dated January 17, 2011, Ms. Jack was reassessed for 2009 and, in reassessing, the Minister of National Revenue included the amount of \$60,991 in her income and imposed a penalty of \$6,068.52, being 10 percent of the income she failed to report, net of deductions, pursuant to subsection 163(1) of the *Act*.

[14] It was at this point or when she received the letter in November 2010 — the date is not clear — that Ms. Jack got in touch with Money Mart. "Ivan", a manager of the local Money Mart, and Catherine from its head office, told her to contact the CRA and ask them for permission to refile her 2009 tax return which Money Mart would prepare without cost. Ms. Jack made the request, which was denied.

[15] At the conclusion of her evidence, Ms. Jack acknowledged that her dates were "mixed up" but declared that the incidents related by her are correct.

[16] Ms. Jack had a lot of problems in the preparation of her tax returns, no matter who prepared them for her, her former husband, H&R Block or Money Mart. It appears from the evidence before me that even during trial Ms. Jack had no idea what papers or forms she may have given to H&R Block and Money Mart to assist in the preparation of her 2008 and 2009 tax returns, respectively. Also, she never made even a cautionary perusal of her respective tax returns for 2008 and 2009 to at least find comfort that the returns were in order.

[17] With respect to her 2008 tax return, she testified that the reported income of \$101,447 was not unusual since her income "is usually about a hundred to \$103,000". She could not recall if she checked to see if she reported income from all the places she worked in 2008. In any event, in 2003 and 2005, her declared incomes were \$64,400 and \$40,395, respectively; her revised incomes were \$66,858 and \$69,573, respectively. There is no evidence of what Ms. Jack's incomes were for 2006 and 2007, in particular, whether they approximated \$100,000, as she claimed at trial. It is not that I question Ms. Jack's credibility — I do not. It is that I question her memory of her recollection of events. I do not suggest that there was any attempt on her part to mislead. It would appear from the evidence before me that reporting income of

over \$100,000 for a year prior to 2008 was not routine and that Ms. Jack ought to have paid more attention in the numbers entered on her tax return for 2008.

[18] The failure to report income of \$60,000 in 2009 is quite serious and while Ms. Jack states she has "learned from my mistakes" and is trying not to have mistakes made again, the Minister has led evidence to justify the establishment of the penalty. Ms. Jack relied wholly on Money Mart to prepare the tax returns. She did not make even a cursory review of the information on the return, notwithstanding her previous difficulties. Whether she even verified that she gave Money Mart all necessary forms, including the T4 form from the University of Alberta, could not be confirmed. And when Money Mart's letter of June 15, 2010 stated a tax return summary being enclosed, she did not go back to Money Mart to obtain the return. She had occasions to review the information prepared for her by Money Mart but for some reason, did not do so.

[19] Ms. Jack did not exercise a reasonable degree of due diligence in the filing of her 2009 tax return or of her 2008 tax return. The amount of income that Ms. Jack failed to report, \$60,000, was not an insignificant amount that the failure of which, as in *Symonds v. R.*, 2001 TCC 274, would be innocent.

[20] There is a difference between innocent and careless. I have no doubt Ms. Jack's failure to report \$60,000 was not deliberate but it was due to her reckless or careless disregard of her obligation to report all of her income in a tax return for an appropriate year.

[21] The magnitude of the omission in relation to her income is significant. Ms. Jack squandered her opportunities to detect the error. She is intelligent, she has a university education. Quite simply, she was negligent in attending to her tax affairs<sup>2</sup>.

---

<sup>2</sup> See *Da Costa v. R.*, 2005 TCC 545, per Bowman, C.J.

[22] The appeal is dismissed.

Signed at Ottawa, Canada, this 3rd day of January 2013.

"Gerald J. Rip"

---

Rip C.J.

CITATION: 2013 TCC 1

COURT FILE NO.: 2012-963(IT)I

STYLE OF CAUSE: DENISE JACK AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: November 28, 2012

REASONS FOR JUDGMENT BY: The Honourable Gerald J. Rip, Chief Justice

DATE OF JUDGMENT: January 3, 2013

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Paige Atkinson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pitney  
Deputy Attorney General of Canada  
Ottawa, Canada