Docket: 2017-1112(IT)I

BETWEEN:

DIPCHAND SEEPERSAD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence on October 19, 2018, at Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Janice Liu Brent Cuddy

JUDGMENT

IN ACCORDANCE with the Reasons for Judgment attached, the appeal from the assessment made under the *Income Tax Act*, RSC 1985, c.1, as amended (the "*Act*") for the 2005 and 2006 taxation years is dismissed, without costs, on the grounds that:

(i) there were no charitable donations compliant with the *Act* beyond those, previously allowed, if any, by the Minister of National Revenue (the "Minister");

(ii) misrepresentation by the Appellant on account of carelessness, neglect or wilful default permitted the Minister to reassess beyond the normal reassessment period in respect of the 2005 taxation year; and

(iii) penalties under subsection 163(2) under the *Act* were established by the Minister to be warranted against the Appellant.

Signed at Ottawa, Canada, this 14th day of November 2018.

"R.S. Bocock"

Bocock J.

Docket: 2017-1114(IT)I

BETWEEN:

SITA SEEPERSAD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence on October 19, 2018, at Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Janice Liu Brent Cuddy

JUDGMENT

IN ACCORDANCE with the Reasons for Judgment attached, the appeal made under the *Income Tax Act*, RSC 1985, c.1, as amended (the "*Act*") is allowed without costs, solely to the extent of an additional amount of $125.00 in charitable donations for the 2005 taxation year and $499.00 for the 2006 taxation year, but in all other respects the reassessment is upheld on the following basis:

(i) there were no further charitable donations compliant with the *Act*;

(ii) misrepresentation on account of carelessness neglect or wilful default permitted the Minister of National Revenue (the "Minister") to reassess beyond the normal reassessment period in respect of the 2005 taxation year; and

(iii) penalties under subsection 163(2) of the *Act* were established by the Minister to be warranted against the Appellant.

The matter is referred back to the Minister for reconsideration and reassessment in accordance with the judgment.

Signed at Ottawa, Canada, this 14th day of November 2018.

"R.S. Bocock"

Bocock J.

Citation: 2018 TCC 226
Date: 20181114
Docket: 2017-1112(IT)I

BETWEEN:

DIPCHAND SEEPERSAD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2017-1114(IT)I

AND BETWEEN:

SITA SEEPERSAD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

COMMON REASONS FOR JUDGMENT

Bocock J.

I. Facts

[1] The Appellants ("Mr. and Mrs. Seepersad") appeal the Minister of National Revenue's (the "Minister") reassessments of their respective 2005 and 2006 taxation years. In reassessing, penalties under section 163(2) of the *Income Tax Act*, R.S.C. 1985 c.1 (5th sup.) (the "*Act*") were also imposed. The following summarizes the couple's reassessment history relevant and material to these appeals:

Taxpayer	2005 Taxation Year	2006 Taxation Year	Reassessment

					Date
	Alleged Recipient	**Disallowed Amount**	**Alleged Recipient**	**Disallowed Amount**	
Mr. Dipchand Seepersad	Faith Assemblies Missions House of Fellowship	$8,145.00	World Council for African Development	$7,244.00	May 11, 2009
	Alleged recipient	**Disallowed Amount**	**Alleged Recipient**	**Disallowed Amount**	
Mrs. Sita Seepersad	City Chapel Ministries International	$6,100.00	World Council for African Development	$5,089.00	April 20, 2009

[2] As is visible, the Minister reassessed both Mr. and Mrs. Seepersad outside the normal reassessment period for the 2005 taxation year.

Preliminary Concessions and Findings Regarding Certain Donations

[3] There is a relatively minor preliminary matter concerning Mrs. Seepersad. In the 2005 taxation year, beyond the sums in the foregoing chart, the Minister also disallowed an additional donation amount of some $95.00 in a separate reassessment for 2005. Unfortunately, it is not clear from the reply what charitable donation(s) comprised this disallowed amount. In addition, in the reply the Minister conceded that Mrs. Seepersad had made a $50.00 charitable donation through her employer in 2005 (possibly through an automatic check off from payroll). Additional concessions in the reply were made to the extent of $499.00 in 2006. At the hearing, Mrs. Seepersad produced compliant receipts from two charities for 2005: Canadian Wildlife Federation in the amount of $25.00 and Voice of the Vedas Cultural Sabha Inc. in the amount of $100.00. The latter entity also received a small donation from Mrs. Seepersad in 2006, which the Minister allowed in that year. Therefore, Mrs. Seepersad shall succeed to the extent of an additional sum of $175.00 in the 2005 taxation year and $499.00 in 2006 to the extent the Minister has not reassessed to allow such amounts prior to the issuance of judgment.

[4] Concerning the bulk of the appeal for Mr. Seepersad, two different receipts were tendered as evidence of donations in the 2005 taxation year: Emelia Memorial International Water Development Inc. for $8,200.00 and Faith Assemblies Mission House of Fellowship in the amount of $8,145.00. As will be seen in the reasons below, the Minister disallowed the receipt for $8,145.00. This disallowed receipt appears to coincide with the amount claimed by Mr. Seepersad in the 2005 return. However, Mr. Seepersad's testimony regarding these two

receipts was confused and contradictory as between testimony in chief and cross-examination.

Witnesses, Testimony and Other Evidence at the Hearing

[5] Both Mr. and Mrs. Seepersad testified at the hearing. The Minister filed affidavits concerning the quantum relationship of the donation amounts to declared income and previous years historically claimed donations. Records of the revocation of all the alleged recipient entities and the criminal prosecutions of the retained tax preparers for Mr. and Mrs. Seepersad were also tendered.

[6] From that testimony and documentary record, the Court has made the following findings of fact concerning events that unfolded culminating in the reassessments now appealed.

How the Appellants Come to Meet their Taxpreparers

[7] Sometime in early 2006, Mr. Seepersad's uncle directed Mr. and Mrs. Seepersad to attend the offices of One Orbit Financial Services[1]. The two principals of Orbit were one "Frempong" and "Amoako". One was subsequently convicted of fraud against Her Majesty and other absconded from the jurisdiction and presumably thereby escaped punishment, if not conviction.

[8] When Mr. and Mrs. Seepersad visited the offices of Orbit in March or April 2006, it was to have their 2005 tax returns prepared. Included in the returns were donation amounts consisting of the 2005 charitable donations described above.

All Money Given in Cash

[9] All money given was in cash. Rudimentary receipts were given for the considerable, if not usurious tax preparation fees; the fees were $2,100.00 and $1,900.00, respectively for the 2005 and 2006 taxation years. Mr. and Mrs. Seepersad asserted they gave representatives of Orbit approximatively $2,000.00 in cash one week in April 2006 and approximately another $2,000.00 cash in a subsequent week. They stated that the balance of their cash donations were withheld until they received their tax refund. Only Orbit received the cash. No cash was directly transferred by Mr. or Mrs. Seepersad to the desired charitable

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[1] The precise name remains unknown to the Court and possibly the Minister since such entity was referred to in the reply solely as "Orbit".

recipient. A similar process was followed in March/April 2007 for the 2006 taxation year.

[10] During tax preparation, Mr. and Mrs. Seepersad were advised of the increased tax refund "selling features". However, both claim their primary motivation, springing from their religious and cultural backgrounds, was to help those in need. They were satisfied that the *en bloc* sums of cash would make it to the intended charitable organizations. They did not attend any events, worship services or fundraisers for their desired charitable recipients. They knew little of the locations or specific activities of the charitable organizations. Recipient selection, amounts to be given and the transfer of funds were all determined and to be executed by Orbit.

History of Tax Filing

[11] Historically, both Mr. and Mrs. Seepersad had either filed their own tax returns, prepared by Mr. Seepersad, or they retained a store front tax preparer. Both speak and understand English and have post-secondary applied educational training. Mr. Seepersad is an air-conditioning technician with a large national commercial landlord. Mrs. Seepersad works as a small office supervisor in a customer relations office. Both admitted the process and result offered by Orbit sounded "too good to be true", but the opportunity to help children in need and to contribute to church construction was attractive. In previous years, charitable donations had been less than $200.00 to $300.00 for each and their related tax refunds were correspondingly miniscule by comparison.

No or Little Review of Tax Returns

[12] Mr. Seepersad did not review his 2005 and 2006 tax returns. He simply allowed it to be e-filed by Orbit. He did not receive a copy of the returns in either year. He received no verification of the intended charities receiving cash. For Mrs. Seepersad, she reviewed the return briefly on the computer screen during preparation and allowed it to be filed electronically. Similarly, she received no copy.

Alleged Hallmark of Legitimacy

[13] As to evidence of authenticity of Orbit's operations, Mr. Seepersad indicated the principals of Orbit advise that CRA officials were coincidentally meeting in

Orbit's boardroom during the time Mr. and Mrs. Seepersad were attending to have their tax returns prepared. Mr. Seepersad did not meet the CRA representative, get a name or a business card.

Record of Givings

[14] The source of the cash for the donations was from that held on hand by Mr. and Mrs. Seepersad. This cash was amassed from Mr. Seepersad's "side jobs" and set aside for charities. There were no withdrawal slips or bank statements produced for either.

Appellant's Grounds for Appeal

[15] Mr. and Mrs. Seepersad contest the disallowed donations, statuted barred assessments and penalties on the following jointly submitted basis:

(1) they are honest, law-abiding people and were hoodwinked and conned by two criminals;

(2) the Canada Revenue Agency bears some responsibility for not sooner stopping Orbit's activities or, at least, warning innocent taxpayers of the scam;

(3) Mr. and Mrs. Seepersad had no intention to misrepresent, knowingly file a false return or avoid paying income taxes; and

(4) neither anticipated, expected nor suspected the dealings of Orbit were a scam.

[16] There are three issues to be determined by the Court:

(a) are Mr. and Mrs. Seepersad entitled to the disallowed non-refundable charitable tax credits identified in the table at the outset of these reasons?;

(b) was the Minister entitled to re-open the 2005 taxation years for both Mr. and Mrs. Seepersad beyond the normal reassessment period on an account of misrepresentation arising from carelessness, neglect or wilful default? and

(c) are subsection 163(2) penalties warranted either because Mr. and Mrs. Seepersad knowingly or under circumstances amounting to gross negligence made false statements in their respectively 2005 and 2006 tax returns?

a) Non-refundable charitable tax credits

[17] The issue of whether amounts were actually paid by Mr. and Mrs. Seepersad[2] or whether they had the requisite donative intent[3] will be discussed in sections (b) and (c), as necessary. Their appeals fail at the outset for a compelling and simple reason: the charitable donation receipts reflecting the alleged donations are manifestly deficient on multiple grounds.

[18] Regulations 3500 and 3501[4] referenced in section 118.1 of the *Act* provide mandatory, unescapable requirements for the form and content of charitable donation receipts. These receipts must be retained and produced to the Minister in compliant form in order for a successful charitable donation deduction[5] to be made.

[19] The following table analyzes each charitable receipt tendered by Mr. and Mrs. Seepersad and outlines the multiple bases by which each is deficient and non-compliant with the *Act* and *regulations*:

Charitable Receipt	Deficiency	Section offended	Deficiency	Section offended	Deficiency	Section offended	Deficiency	Section offended
Emelia Memorial International Water Development Inc.	Cash, but no dates, amounts per date or breakdown	3501(1)(e)			No locality of receipt issuance	3501(1)(d)	No reference to CRA website	3501(1)(j)
Faith Assemblies Mission House of fellowship	Cash, but no dates, amounts per date or breakdown	3501(1)(e)	No date of issuance	3501(1)(f)	No locality of receipt issuance	3501(1)(d)	No reference to CRA website	3501(1)(j)
World Council for African Development	Cash, but no dates, amounts per date or	3501(1)(e)	No address on official statement	3501(1)(a)	No locality of receipt issuance	3501(1)(d)	No reference to CRA website	3501(1)(j)

2 *Coombs* v *The Queen*, 2008 TCC 289.

3 *Frieberg* v *HMQ*, 1991 CarswellNat 669.

4 *Patel* v *The Queen*, 2011 TCC 555 at paragraph 16 itself citing *Plante* v *R.*, 1999 CarswellNat 418.

5 *Patel supra* at paragraph 30.

	breakdown							
City Chapel Ministries International	Cash, but no dates, amounts per date or breakdown	3501(1)(e)			No locality of receipt issuance	3501(1)(d)	Donor's name spelled incorrectly	3501(1)(g)

[20] Given these deficiencies as to form and content, Mr. and Mrs. Seepersad are not entitled to the charitable deductions claimed for the entities listed above.

b) Reopening the statute barred assessment years

[21] Subsection 152(4) of the *Act* is not punitive. Its purpose is to ensure the where a misrepresentation is made, the Minister is not precluded from reassessing because the three year time limitation may be not be a sufficient period in which a misrepresentation may be discovered. The misrepresentation must arise from neglect, carelessness or wilful default. Two leading cases have indicated that the standard is one of a wise and prudent person[6] who would otherwise discover any obvious error through a careful review[7]. There need be no intention to deceive[8] and the errors of an accountant will not prevent the application of 152(4)[9].

[22] In these appeals, the assessments for the otherwise statute barred assessment years are to be reopened. There are multiple bases by which Mr. and Mrs. Seepersad made a misrepresentation through some combination of neglect, carelessness and/or wilful default. The following is a selective and not exhaustive list:

(i) the full amount of the annual donation, by each of Mr. and Mrs. Seepersad's own admissions, was not given at the time the tax return was authorized to be filed. At best, this was wilful default, but it approaches a knowing misstatement of fact;

(ii) testimony stated deductively that no amounts claimed as donations in 2005 were actually given in 2005, but rather exclusively in March, April and post-refund in 2006. The same was true for the 2006 donations being given entirely in 2007;

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6 *Vine Estate* v *The* Queen, 2014 TCC 64, paragraph 47.
7 *Nesbitt* v *The Queen*, 2003 TCC 942.
8 *Syla* v *The* Queen, 2016 TCC 266, paragraphs 9 and 10.
9 *Snowball* v *R.*, 1996 CarswellNat 1309 at paragraphs 8 and 18.

(iii) according to the testimony of each based upon the "approximate" amounts tendered both in March and April during the tax preparation season for the previous year, and allegedly and approximately "topped up" after receipt of the refund, it is almost certain the amounts claimed in the returns were much less than the amounts given and, in any event, not accurate; and

(iv) Mr. Seepersad did not read or review his tax return. Mrs. Seepersad did so, but only to the extent of a five minute screen shot review on a computer monitor screen.

[23] Certain of the foregoing facts are sufficient to establish, on balance, a misrepresentation on account of neglect or carelessness. Other facts were all clearly known to both Mr. and Mrs. Seepersad and are patent labels of misrepresentation in the return known to and admitted by Mr. and Mrs. Seepersad. As such, the returns were properly subject to reassessment beyond the normal reassessment period.

c) 163(2) Penalties

[24] In the reply, the Minister pleaded both knowledge or gross negligence in the making, participating in, assenting to or acquiescing in of false statements in the relevant returns. The Court will focus on the threshold involving less culpability: gross negligence. Should the Minister, who bears the onus establish gross negligence, a knowingly made false statement is moot.

[25] Gross negligence need not include an executed or effective action. Instead, it may arise from omission or inaction borne of wilful blindness[10]. In other word, in a marked departure from usual practice, did the taxpayer choose to ignore certain steps?

[26] Relevant to cases such as these of Mr. and Mrs. Seepersad are certain factors to be analyzed to determine if a taxpayer has been wilfully blind within of the factual landscape before her or him. These summarized factors, arising in the case of *Torres* v *The Queen*[11] and applied and refined in other cases, are as follows:

(a) knowledge of a false statement can be imputed by wilful blindness;

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[10] *Wynter* v *Canada*, 2017 CarswellNat 5049, 2017 FCA 195 at paragraphs 20 and 21.

[11] *Torres* v *R.*, 2013 CarswellNat 4583, 2013 TCC 380.

(b) the concept of wilful blindness can be applied to gross negligence penalties pursuant to subsection 163(2) of the *Act*;

(c) in determining wilful blindness, consideration must be given to the education and experience of the taxpayer;

(d) to find wilful blindness there must be a need or a suspicion for an inquiry;

(e) circumstances that would indicate a need for an inquiry prior to filing, or flashing red lights…, include the following:

(i) the magnitude of the advantage or omission;

(ii) the blatantness of the false statement and how really detectable it is;

(iii) the lack of acknowledgement by the tax preparer who prepared the return in the return itself;

(iv) unusual requests made by the tax preparer;

(v) the tax preparer being previously unknown to the taxpayer;

(vi) incomprehensible explanation by the tax preparer;

(vii) whether others engaged the tax preparer or warned against doing so, or the taxpayer himself or herself expresses concern about telling others;

(f) the final requirement for wilful blindness is that the taxpayer makes no inquiry of the tax preparer to understand the return, nor makes any inquiry of a third party, nor the CRA itself.

[27] Mindful that penalties under subsection 163(2) are assessed against each taxpayer separately, the Court has assessed Mr. and Mrs. Seepersad distinctly and differentiated where differing circumstances, facts or other factors warrant. It should be noted however, they attended Orbit together and otherwise corroborated each other's facts.

(a) Education and background of taxpayer

[28] Both Mr. and Mrs. Seepersad are reasonably articulate, well-spoken and engaging people. They have careers, post-secondary education and otherwise understand their obligations as members of a modern democracy as described in these reasons. They also clearly indicated they ought to have been wary of the scam in which they participated, however unwittingly.

[29] The following summary of reasons why they should have deployed those possessed skills of detection and discernment are as follows, referable to the factors in *Torres*:

(i) the amounts of the claimed donations and received refunds relative to the amount given was completely unreconciliable;

(ii) they simply had not given the amount of money they claimed they did at the time they said they did;

(iii) there is no copy of their tax returns which was e-filed and no copy retained by each for the first time in their filing histories;

(iv) no donation was given directly to the charitable organization and no receipt was received directly from the charity; Orbit was the sole and only nexus to the charity;

(v) Orbit requested a very large cash fee for its services, which Mr. Seepersad acknowledged was due to the large refund to be obtained;

(vi) Orbit was not known to Mr. and Mrs. Seepersad prior to the referral from Mr. Seepersad's uncle;

(vii) the coincidence of CRA officials visiting Orbit's office at the time of tax preparation is beyond possibility when coupled with the inopportunity to meet or confirm the authenticity of the visit or visitors; and

(viii) while Mr. Seepersad's uncle referred the Appellants to Orbit, it is clear his better instincts raised hesitation to proceed.

[30] Lastly, the critical and final step to detection is a review of the tax return, particularly where no other basis for reliance exists, such as a longstanding relationship, credible references or reliable third party confirmation. There was simply no basis for reliance, no history of confidence and no inquiries for confirmation in the facts before the Court. Neither Mr. nor Mrs. Seepersad engaged in a review of the tax return reflective of their respective and distinct education, experience and knowledge.

[31] In summary, the facts within these appeals snag all of the factors which ought to raise suspicion for either Appellant. Regrettably, both Mr. and Mrs. Seepersad independently ignored those. Such volitional aversion was grossly negligent. The penalties shall remain.

[32] For these reasons, the appeals are dismissed without costs, subject to the exception that technically Mrs. Seepersad's appeal for 2005 and 2006 is allowed solely to the extent of additional amounts in charitable donations unrelated to the Orbit scheme and specified in these reasons for judgment.

Signed at Ottawa, Canada, this 14th day of November 2018.

"R.S. Bocock"

Bocock J.

CITATION:	2018 TCC 226
COURT FILE NOs.:	2017-1112(IT)I, 2017-1114(IT)I
STYLE OF CAUSE:	DIPCHAND SEEPERSAD AND HER MAJESTY THE QUEEN; SITA SEEPERSAD AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 19, 2018
REASONS FOR JUDGMENT BY:	The Honourable Mr. Justice Randall S. Bocock
DATE OF JUDGMENT:	November 14, 2018

APPEARANCES:

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