

BETWEEN:

EDWARD STRACHAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 4 and 5, 2019, at Toronto, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rishma Bhimji Samantha Hurst

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**JUDGMENT**

The appeal from reassessments made under the *Income Tax Act* for the 2006, 2007, 2008, 2012 and 2013 taxation years is allowed, without costs, on the following basis:

- (a) with respect to the 2008 taxation year, the Appellant's capital gain is reduced from \$94,003 to \$14,003, resulting in a taxable capital gain of \$7,002;
- (b) with respect to the 2012 taxation year, the Appellant is entitled to deduct rental repairs and maintenance expenses in the amount of \$9,000;
- (c) with respect to the 2013 taxation year, the Appellant is entitled to deduct rental repairs and maintenance expenses in the amount of \$6,000; and

(d) the Minister's reassessments are otherwise upheld.

Signed at Vancouver, British Columbia, this 12th day of March 2020.

“Susan Wong”

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Wong J.

Citation: 2020 TCC 37  
Date: 20200312  
Docket: 2017-3341(IT)I

BETWEEN:

EDWARD STRACHAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Wong J.

#### **Introduction**

[1] The Appellant Edward Strachan appeals the Minister of National Revenue's assessments/reassessments of his 2006, 2007, 2008, 2012, and 2013 taxation years.

[2] The Appellant testified on his own behalf and neither party called other witnesses.

#### **Issues**

[3] The issues are as follows, broken down by tax year:

*With respect to 2006:*

- a) disallowed business loss (Stocklogics) of \$21,000;
- b) gross negligence penalty of \$3,010;
- c) assessment made after the normal reassessment period (i.e. statute-barred);

With respect to 2007:

- d) disallowed business loss (Stockmarketlive) of \$24,000;
- e) disallowed business loss (Detax) of \$236,604;
- f) gross negligence penalties totalling \$31,660, comprised of \$3,324 (Stockmarketlive) and \$28,336 (Detax);

With respect to 2008:

- g) disallowed business loss (Detax) of \$212,724;
- h) increased capital gain of \$94,003 (taxable capital gain being \$47,001);
- i) gross negligence penalty of \$25,264 (Detax);
- j) disallowed \$140,583 in non-capital loss carryback amounts comprised of \$63,502, \$43,478, and \$33,603 for the 2005, 2006, and 2007 taxation years, respectively;

With respect to 2012:

- k) disallowed business investment loss of \$33,500;
- l) disallowed rental repairs and maintenance expenses of \$9,000;

With respect to 2013:

- m) disallowed business investment loss of \$12,500; and
- n) disallowed rental repairs and maintenance expenses of \$6,000.

[4] With respect to 2007 and 2008, the aggregate of all amounts in issue (tax and penalties) exceeds \$25,000 in each year. At the commencement of the hearing, the Appellant elected to have the appeal of these two years heard under the Informal Procedure and agreed to limit his appeal to \$25,000 for each of 2007 and 2008, as is required by section 18.1 of the *Tax Court of Canada Act*.

**Factual background - General**

[5] The Appellant is a retired airline pilot who began flying planes for Air Canada in 1965 and did so until his retirement in 1993.

[6] He testified that Carlton Branch of Fiscal Arbitrators prepared and filed income tax returns on his behalf from 2006 to 2013. In cross-examination, he stated that he could not recall why he changed from his previous accountant to Mr. Branch but believed he did so because his previous accountant moved locations.

[7] He testified that he paid Mr. Branch varying amounts to prepare his returns and that sometimes Mr. Branch did not charge him a fee for this service.

[8] No evidence was led by the Respondent at the hearing with respect to Fiscal Arbitrators or Detax in a general sense, although some specific information was obtained from the Appellant during cross-examination. General information about Detax and Fiscal Arbitrators is first introduced in paragraphs 32 to 34 of the Respondent's written submissions. This macro-level information is not trite; therefore, to the extent that it was not introduced or elicited prior to submissions, I am unable to rely on it.

**Factual background – 2006 taxation year**

[9] The Appellant's 2006 T1 return is signed "Edward Strachan per C. Branch" [Exhibit R-1, Tab 1]. The Appellant testified that he was sick in 2006 so Mr. Branch prepared and filed the return on his behalf. The adjacent box 490 for professional tax preparers is completed by "Carlton Financial Services".

[10] He testified that he became aware of Stocklogics when Mr. Branch asked him if he wished to invest in it. He stated that they looked it up together and confirmed that it was registered as a corporation.

[11] In cross-examination, he stated he understood that for every one dollar he donated, he would receive five dollars in return. He stated that the amount of his payment (i.e. \$3,500) aligned with the amount of the business loss claimed in his 2006 return (i.e. \$21,000). He described the situation as that of someone coming to sell him something, which he bought. He also testified that he had no proof of his payment other than his cancelled cheque.

[12] When asked in cross-examination about the \$21,000 business loss claimed with respect to Stocklogics in his 2006 return, he acknowledged that there was no business. Copies of slips attached to the Appellant's 2006 return show that his income sources consisted of his Air Canada retirement pension, Old Age Security, and a Canada Pension Plan retirement benefit.

[13] When asked about the Statement of Business Expenses attached to his 2006 return, he stated that he wrote a cheque for \$3,500 to 1245093 Ontario Incorporated and he understood the process to be like donating money to a charity. He stated that he understood his payment to be a charitable donation which would then go to Stocklogics, who would use the funds to build a gym and recreational facilities for indigenous children. He testified that Stocklogics seemed progressive to him and that he wrote his cheque without receiving any information about the expenses listed in the Statement of Business Expenses.

[14] Copies of Stocklogics documents were behind tab 17 of the Respondent's Book of Documents. They were not tendered into evidence during the hearing so they do not form part of Exhibit R-1 and I am unable to rely on them. There are assumptions of fact with respect to the Stocklogics Joint Venture Partnership in the Respondent's Amended Reply at paragraphs 13(a) to (r), on pages 5 and 6.

#### Factual background – 2007 taxation year

##### *Stockmarketlive business loss*

[15] With respect to Stockmarketlive, the Appellant testified that he became involved as a result of speaking with Mr. Branch.

[16] The Appellant stated that he understood the process to be one of money being collected and given to a company which would be going on the stock exchange. He testified that he understood that if he gave one dollar, he would receive five dollars in return. He stated that it seemed like a good idea based on his success with Stocklogics in 2006. He stated that he gave \$4,000 as a donation and received \$24,000 in business expenses to deduct, which was the same procedure as in 2006.

[17] He testified that as with 2006, he did not receive a donation receipt and that he only had his cancelled cheque. He stated that Stockmarketlive was not a business and that his payment was for a charitable rather than a business purpose.

[18] In correspondence back and forth between the Minister and the Appellant, the Minister requested additional information about the claimed losses, the Appellant asked the purpose of the Minister's request, the Minister explained the purpose of her request, and the Appellant provided a copy of a June 21, 2007 Statement of Business Expenses in support of the \$24,000 Stockmarketlive business loss [Exhibit R-1, Tabs 4, 6, 7, and 8]. At the bottom of his February 9, 2009 cover letter, he states that "All proposals of disallowing all business losses and gross business income and offers to levy penalties are hereby rejected." [Exhibit R-1, Tab 8].

[19] The June 21, 2007 Statement of Business Expenses states that:

StockMarketLive.TV has contracted StockLogics Nevada Corp. to develop a personalized sectorized web page system for the purpose of advertising and the development of affiliate networks.

[Exhibit R-1, Tab 8]

[20] The June 21, 2007 statement also breaks down the \$24,000 business loss into the following:

- a) a deposit of \$4,000 to complete the above task; and
- b) \$20,000 to cover the "complete cost with ongoing hosting".

[Exhibit R-1, Tab 8]

\$236,604 business loss

[21] With respect to the disallowed business loss of \$236,604, a copy of the Appellant's T1 adjustment request shows that he asked to have this amount applied to his 2007 taxation year [Exhibit R-1, Tab 2]. In support of the T1 adjustment request, the Appellant filed a Statement of Business Activities and a Statement of Agent Activities [Exhibit R-1, Tab 2].

[22] The Statement of Business Activities shows the following:

- a) the main product or service was that of "Agent in Commerce". In cross-examination, the Appellant stated that he did not know what this phrase meant;

- b) the income earned consisted of “Additional monies collected as agent for principal”; and
- c) the expenses incurred consisted of “Monies paid to principal as agent”.

[23] With respect to the Statement of Business Activities as a whole, the Appellant stated that there was no business.

[24] The Statement of Agent Activities shows the following:

- a) the business name is “Edward Strachan”;
- b) the business service is “Agent”; and
- c) the business loss claimed results from \$270,886.00 paid for subcontracts and labour, less \$34,282.00 collected as “Agent for Principal and reported by third parties”.

[25] With respect to the Statement of Agent Activities, the Appellant acknowledged in cross-examination that the handwriting on this document appeared to be his. He stated that he may have signed the document under duress because he was sick at the time.

[26] During cross-examination, the Appellant was directed to copies of various letters signed by him and addressed to Canada Revenue Agency [Exhibit R-1, Tabs 6, 8, 10, and 11]. He acknowledged signing these letters but stated that whenever a letter began with the phrase, “This letter is a timely response” (as these did), they were written by Larry Watts of Fiscal Arbitrators.

#### Factual background – 2008 taxation year

[27] A copy of the Appellant’s 2008 T1 return is signed by him and the Appellant testified that he believed Mr. Branch prepared this return on his behalf [Exhibit R-1, Tab 3]. The adjacent box 490 for completion by professional tax preparers is blank and the Appellant stated that he did not know why Mr. Branch did not complete it that year.



Business loss

[28] A business loss of \$212,724.50 is claimed at line 162 of the return and a Statement of Agent Activities is filed in support of the claimed loss [Exhibit R-1, Tab 3].

[29] Similar to the Statement of Agent Activities filed in support of the business loss claimed for 2007, this Statement shows the following:

- a) the business name is “Edward Strachan”;
- b) the business service is “Agent”; and
- c) the business loss claimed results from \$225,709.92 paid for subcontracts and labour, less \$12,935.44 collected as “Agent for Principal and reported by third parties”.

[30] On November 13, 2009, the Minister sent a letter to the Appellant requesting information about the \$212,724.50 business loss, among other things [Exhibit R-1, Tab 12]. In cross-examination, the Appellant stated that he would have received this letter but he was in Florida and did not have a specific recollection of it.

[31] On December 10, 2009, the Appellant sent the Minister a signed letter in response which provided the following, among other things:

- a) responses of “N/A” to most of the Minister’s requests;
- b) a statement that “You can complete the assessment with all the information that you currently have on file”;
- c) a header at the top of the letter that “Notice to agent is notice to principal” and “Notice to principal is notice to agent”; and
- d) below the Appellant’s signature as authorized representative, the phrase “Without recourse, all rights reserved, exempt from levy, with prejudice”.

[Exhibit R-1, Tab 13]

[32] In cross-examination, the Appellant agreed that he signed the letter and stated that Mr. Watts prepared it. He stated that Mr. Watts responded on his behalf

because he (the Appellant) had been sick. He also testified that he could not explain the meaning of the responses provided in the letter.

Capital gain

[33] With respect to the assessed capital gain of \$94,003, the Minister's assumptions of fact at paragraph 13 of the Amended Reply show that:

- a) this amount arose from the Appellant's disposition of investments totalling \$119,018 that year [paragraph 13(pp)];
- b) after adjusting the cost base of the shares/mutual funds disposed of, the resulting capital gain was \$94,003 [paragraph 13(rr)]; and
- c) the T5008 slips issued for these dispositions were not included by the Appellant in his return.

[34] The Appellant testified that he agreed with the \$119,018 figure and stated that he incurred penalties as a result of cashing in his mutual funds early. He also provided a summary of the cost of acquiring the securities in question [Exhibit A-1, Tab J].

[35] During the hearing, the Respondent conceded that based on the Appellant's summary, the resulting capital gain on disposition should decrease from \$94,003 to \$14,003.

Factual background – 2012 taxation year

Business investment loss

[36] The Appellant claimed a business investment loss in the amount of \$33,500 with respect to the 2012 taxation year. Based on the Appellant's notice of objection, the \$33,500 consisted of a \$2,500 loss attributable to Lesley-Anne Strachan Enterprises and a \$31,000 loss attributable to Carlton Financial Management Inc. [Exhibit R-1, Tab 34].

[37] The Appellant testified that Lesley-Anne Strachan Enterprises was his daughter's sole proprietorship painting business. He stated that her business was unsuccessful because she could not collect payment from her customers and could not pay her creditors. Attached to his notice objection is a copy of a statement

signed by his daughter in which she states that the business was a painting and consulting firm which operated from 2010 to 2014, and that it has no assets, receivables, or accounts [Exhibit R-1, Tab 34].

[38] With respect to Carlton Financial Management Inc., a copy of a March 4, 2015 letter is attached to the notice of objection and signed by Mr. Branch as managing director [Exhibit R-1, Tab 34]. The letter says that the Appellant advanced \$50,000 which was managed and invested unprofitably in a foreign exchange platform through an agent/broker, and that \$20,500 was returned to the Appellant. The header at the top of the letter says that the company is located in Barbados.

[39] The Appellant testified that Mr. Branch had an idea to follow the money market trade and that he (the Appellant) invested unsuccessfully in Mr. Branch's offshore company.

*Rental repairs and maintenance expenses*

[40] The Appellant sought to deduct \$9,000 of expenses for rental repairs and maintenance. Attached to the notice of objection is a September 20, 2011 statement signed by the Appellant in which he states that he owed an individual named Paul Jessop for repairs and consulting work done with respect to a property in Belwood, Ontario [Exhibit R-1, Tab 34]. The statement says that the work was done in 2008 but that the Appellant began paying Mr. Jessop in 2012. Copies of seven cancelled cheques signed by the Appellant and payable to Mr. Jessop are attached to the notice of objection. The cheques each have a description on the memo line in the lower left-hand corner describing the payment as relating to a promissory note [Exhibit R-1, Tab 34].

[41] The promissory note is dated September 20, 2011 and reads as follows:

I, Edward A. Strachan hereby acknowledge a debt to Paul Jessop in the amount of \$10,000.00 for work and counselling on repairs accomplished on 8 Broadway, Belwood, Ontario, L0B 1J0 on or about the months of May, June, July, August and September 2008, and for further work and counselling of a/n property on occasions, until present date. I hereby promise and undertake to pay the sum of \$500.00 or more per month commencing 5 January 2012, and on the 5th day of each month until all funds are repaid in full as set out herein[sp] at a rate of 0% interest annually.

[Exhibit A-1, Tab N; Exhibit R-1, Tab 34]

[42] In cross-examination, the Appellant stated that he drafted the promissory note but could no longer recall who signed the witness line.

[43] The Appellant testified that the Belwood property was a duplex and Mr. Jessop was his former son-in-law. The Appellant stated that his son lived rent-free in one side of the duplex while the other side was rented sporadically to tenants. He testified that Mr. Jessop did carpentry work and gave him advice on the work. The Appellant stated that he and Mr. Jessop agreed that when the Appellant died, Mr. Jessop would be paid for his work out of the Appellant's estate. In cross-examination, he testified that he sold the Belwood property in April 2012.

[44] The Appellant provided copies of the following invoices from third parties with respect to the Belwood property:

- a) an April 21, 2012 invoice in the amount of \$101.70 from R & H Cleaning for cleaning services. Lynn Glapski of Edge Realty Solutions is the addressee for the invoice;
- b) a January 25, 2012 invoice from L.S. Plumbing Ltd. for a service call. The amount charged is obscured but a copy of a February 17, 2012 cheque in the amount of \$88.48 payable to L.S. Plumbing Ltd. is attached. Ms. Glapski is the addressee for the invoice and writer of the cheque in payment; and
- c) a February 16, 2012 invoice for \$316.40 from Weber Environmental Services for pumping the septic tank. The Appellant is the addressee for the invoice and the invoice shows that it was paid by VISA.

[Exhibit A-1, Tab N]

#### Factual background – 2013 taxation year

##### *Business investment loss*

[45] The Appellant claimed a business investment loss in the amount of \$12,500 with respect to the 2013 taxation year. Based on the Appellant's notice of objection, the \$12,500 was attributable to further investment amounts paid to Lesley-Anne Strachan Enterprises [Exhibit R-1, Tab 35]. The \$12,500 consisted of a \$10,000 cheque written by the Appellant to his daughter and a \$2,500 bank draft from the Appellant to his daughter's sole proprietorship. A copy of the cancelled cheque shows the words "Investment loan for cc debts" on the memo line in the lower left hand corner [Exhibit R-1, Tab 35].

Rental repairs and maintenance expense

[46] The Appellant sought to deduct \$6,000 of expenses for rental repairs and maintenance. The notice of objection shows that these expenses relate to the Belwood property again [Exhibit R-1, Tab 35].

[47] The Appellant provided copies of three cancelled cheques dated January 1, 2013 (cheque no. 129), February 1, 2013 (cheque no. 130), and March 1, 2013 (cheque no. 131). The cheques are payable to Mr. Jessop in the amount of \$2,000 per cheque. The words “Loan from EAS #1”, “Loan from EAS #2”, and “Loan from EAS #3” are handwritten on the memo line in the lower left hand corner of cheques 129, 130, and 131, respectively [Exhibit A-1, Tab N].

[48] The Appellant also provided a copy of a handwritten document dated March 15, 2012 and entitled “Acknowledgment Note”, which reads as follows:

I, Edward A. Strachan, acknowledge that cheques numbered 129, 130 and 131 dated on 1st of January, February and March 2012, issued on my account, number [Redacted] from the Bank of Nova Scotia, marked as EAS Loan #1, 2 and 3, be accepted, instead, as work, counselling and repairs done by Paul Jessop, on premises owned by me, at 8 Broadway, Belwood, Ontario L0B 1J0, from May 2008 until present date.

Analysis

[49] There are numerous provisions which are relevant to the substantive issues under appeal. In the present case, the most significant one is subsection 230(1) of the *Income Tax Act*, which states that:

**230. (1) Records and books [of business]** – Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person’s place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[50] Very little reliable documentary evidence was provided in support of the disallowed amounts. I was also unable to rely on the Appellant’s oral testimony, which was inconsistent and at times implausible.

*Stocklogics and Stockmarketlive business losses – 2006 and 2007*

[51] With respect to both the Stocklogics and Stockmarketlive business losses, the Appellant described the arrangement as one of a charitable donation with a very favourable rate of return to him. On the other hand, it is clear from his 2006 T1 return and his 2007 T1 adjustment request that business losses were claimed in 2006 and 2007 with respect to Stocklogics and Stockmarketlive, respectively. He acknowledged in his testimony that neither Stocklogics nor Stockmarketlive were businesses.

[52] As a result, the Minister's assumptions with respect to Stocklogics and Stockmarketlive at paragraphs 13(a) to (r) and paragraphs 13(s) to (hh) of the Amended Reply, respectively, were not rebutted.

[53] Therefore, I find these amounts to have been properly disallowed by the Minister.

[54] The issue of whether these amounts were charitable donations for the purposes of section 118.1 of the Act is not before me. However, the requisite elements of a gift do not appear to be present.

*Other business losses – 2007 and 2008*

[55] With respect to the \$236,604 and \$212,724 business losses claimed in 2007 and 2008, respectively:

- a) the Statement of Business Activities for 2007 described the Appellant's main product or service to be that of an "agent in commerce", that his income was earned as agent for principal, and that his expenses were paid to principal as agent. These descriptions are nonsensical and cannot be used to establish the business losses claimed; and
- b) the Statement of Agent Activities submitted for both years describes the business losses to result from monies paid for subcontracts and labour. To the extent that this assertion might be true, no evidence was tendered in support of subcontracts and labour. However, I do not believe that these amounts were paid because the terminology in the document is nonsensical.

[56] Therefore, I find these amounts to have been properly disallowed by the Minister.

Capital gain of \$94,003 - 2008

[57] At the hearing, the Respondent conceded that the capital gain on disposition should decrease from \$94,003 to \$14,003. As a result, the taxable capital gain would be \$7,002, i.e. one-half, pursuant to subsection 38(a) of the Act.

Non-capital loss carryback amounts from 2008 to be applied to 2005, 2006 and 2007

[58] As I have found the 2008 business loss to be properly disallowed by the Minister, there is no non-capital loss to carry back to previous taxation years. Therefore, these carryback amounts were properly disallowed by the Minister.

Business investment loss – Lesley-Anne Strachan Enterprises – 2012 and 2013

[59] There was *prima facie* evidence of payments made by the Appellant to his daughter, but evidence showing the details of the investment was not introduced. While providing financial assistance to his daughter to help her pay her creditors is laudable, it is not evidence of a business investment.

[60] Therefore, I find these amounts to have been properly disallowed by the Minister.

Business investment loss – Rental repairs and maintenance expenses – 2012 and 2013

[61] In the Respondent's written submissions at paragraphs 49 and 50, she concedes these amounts as justifiable expenses incurred for the repair and maintenance of the Belwood property.

Assessment beyond the normal reassessment period - 2006

[62] Under subparagraph 152(4)(a)(i) of the Act, the Minister may assess a taxpayer beyond the normal reassessment period only if:

**152. (4)(a)** the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act...

[63] In *Venne v. Her Majesty the Queen*, [1984] CTC 223, 84 DTC 6247 at para. 16 (FCTD), the Court stated that:

[I]t is sufficient for the Minister, in order to invoke the power under subparagraph 152(4)(a)(i) of the Act to show that, with respect to any one or more aspects of his income tax return for a given year, a taxpayer has been negligent. Such negligence is established if it is shown that the taxpayer has not exercised reasonable care. This is surely what the words “misrepresentation that is attributable to neglect” must mean, particularly when combined with other grounds such as “carelessness” or “wilful default” which refer to a higher degree of negligence or to intentional misconduct.

[64] In the present appeal, the Appellant claimed the \$21,000 business loss with respect to Stocklogics and included a supporting Statement of Business Expenses in his filed return. His testimony conflated the concepts of business loss and charitable donation, i.e. he acknowledged that there was no business and stated that his \$3,500 payment was a charitable contribution for which he expected a 5- or 6-to-1 rate of return.

[65] It is clear from the evidence that the Appellant was primarily concerned with the rate of return for his \$3,500 payment and not the way in which the money would be used. It does not appear that he made a meaningful effort to inform himself as to how his payment would yield the promised rate of return. In testifying about Stockmarketlive with respect to 2007, the Appellant referred to the success he experienced with Stocklogics which I interpret to mean the rate of return. It does not appear that he was concerned with the veracity of the documents filed on his behalf.

[66] The Appellant testified that Mr. Branch signed the return on his behalf because he (the Appellant) was sick. Subparagraph 152(4)(a)(i) captures the actions of a person filing the return on behalf of the taxpayer so there is no distinction between the Appellant or a person authorized by the Appellant.

[67] Based on the foregoing, I find that the Appellant’s claimed \$21,000 Stocklogics business loss to be a misrepresentation made in his 2006 T1 return attributable to neglect, carelessness or wilful default.



Gross negligence penalty – 2006, 2007 and 2008

[68] Subsection 163(2) of the Act states that:

**163. (2) False statements or omissions** – Every 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, form, certificate, statement or answer (in this section referred to as a “return”) filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty...

[69] In *Venne*, the Court stated as follows at paragraph 37:

“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.

[70] In the present case, gross negligence penalties were assessed with respect to the disallowed business losses claimed in the 2006, 2007, and 2008 taxation years.

[71] Before his retirement, the Appellant worked in a profession with a high level of responsibility and requiring the ability to understand complex concepts.

(a) 2006

[72] With respect to the Stocklogics business loss claimed in 2006, I am of the view that the conduct which I described above for the purposes of subparagraph 152(4)(a)(i) meets the threshold for gross negligence and specifically, demonstrated an indifference as to whether the law is complied with or not.

(b) 2007

[73] With respect to the Stockmarketlive loss:

- a) the Statement of Business Expenses provided in response to the Minister’s information request contained a nonsensical description of the \$24,000 loss. The Appellant signed the cover letter enclosing this statement;
- b) the Appellant testified that he gave \$4,000 as a donation and received \$24,000 in business expenses to deduct. As with Stocklogics, his testimony conflated the concepts of business loss and charitable donation, i.e. he acknowledged that there was no business and stated that his \$4,000 payment

was a charitable donation for which he expected a 5- or 6-to-1 rate of return; and

- c) with respect to Stockmarketlive, the Appellant testified that it was not a business and that his payment was made for a charitable purpose.

[74] With respect to the \$236,604 loss:

- a) the Statement of Business Activities and Statement of Agent Activities filed in support contain nonsensical descriptions of the Appellant's business and services provided. The Appellant signed the T1 adjustment request attaching these statements; and
- b) the Appellant acknowledged signing various letters to the Minister [Exhibit R-1, Tabs 6, 8, 10, and 11] but stated that they were written by Larry Watts of Fiscal Arbitrators. The letters are largely non-responsive in nature, i.e. they ask questions in rebuttal [Tab 6], employ sarcasm [Tab 8], demand affidavits [Tab 10], and request indemnity from the Minister [Tab 11].

[75] With respect to the Stockmarketlive loss, it is clear from the evidence that the Appellant was primarily concerned with the rate of return for his \$4,000 payment and not the way in which the money would be used. It does not appear that he made a meaningful effort to inform himself as to how his payment would yield the promised rate of return. It does not appear that he was concerned with the veracity of the documents filed in support of that loss.

[76] With respect to the \$236,604 loss, the nonsensical content of the filed documents makes it clear that the loss was fictitious. The Appellant's endorsement of the subsequent letters he did not draft suggests that he either agreed or he was not concerned with their content.

[77] In both instances, I am of the view that the conduct meets the threshold for gross negligence and specifically, demonstrated an indifference as to whether the law is complied with or not.

(c) 2008

[78] With respect to the \$212,724 loss:

- a) the Statement of Agent Activities filed in support was similar to the one filed in 2007 and contained nonsensical descriptions of the business services provided by the Appellant. The Appellant signed his 2008 T1 return which included this statement; and
- b) in response to the Minister's request for additional information, the Appellant signed the December 10, 2009 letter containing mostly non-responsive statements [Exhibit R-1, Tab 13]. He testified that Mr. Watts prepared this letter on his behalf because he (the Appellant) had been sick.

[79] With respect to this loss, the nonsensical content of the filed statement and its similarity to the documents filed for the 2007 taxation year makes it clear that the loss was fictitious. The fact that the Appellant signed his 2008 T1 return and later endorsed the December 2009 letter suggests that he either agreed or he was not concerned with their content. The fact that the Appellant may have been sick in December 2009 may address an isolated event but it does not explain a course of conduct.

[80] I am of the view that the conduct meets the threshold for gross negligence and specifically, demonstrated an indifference as to whether the law is complied with or not.

### **Conclusion**

[81] The appeal is allowed only with respect to the concessions made by the Respondent and without costs, on the following basis:

- a) with respect to the 2008 taxation year, the Appellant's capital gain is reduced from \$94,003 to \$14,003, resulting in a taxable capital gain of \$7,002;
- b) with respect to the 2012 taxation year, the Appellant is entitled to deduct rental repairs and maintenance expenses in the amount of \$9,000;
- c) with respect to the 2013 taxation year, the Appellant is entitled to deduct rental repairs and maintenance expenses in the amount of \$6,000; and
- d) the Minister's reassessments are otherwise upheld.

Signed at Vancouver, British Columbia, this 12th day of March 2020.

“Susan Wong”

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Wong J.

CITATION: 2020 TCC 37

COURT FILE NO.: 2017-3341(IT)I

STYLE OF CAUSE: EDWARD STRACHAN and HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 4 and 5, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF JUDGMENT: March 12, 2020

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rishma Bhimji Samantha Hurst

COUNSEL OF RECORD:

For the Appellant:	
Name:	n/a
Firm:	n/a
For the Respondent:	Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Canada