

Dockets: 2017-1005(IT)I
2017-2850(IT)I
2017-4985(GST)I

BETWEEN:

AUTO MACULATE INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Dockets: 2017-1330(IT)I
2017-4959(GST)I

AND BETWEEN:

PHILIP WAHAB,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2017-1331(IT)I

AND BETWEEN:

STEPHANIE WAHAB,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard, on common evidence, on December 4, 2018;
February 11, 2019; June 12 and 13, 2019; and September 18, 19 and 20,
2019 at Hamilton, Ontario

Before: The Honourable Justice K.A. Siobhan Monaghan

Appearances:

Agent for the Appellants, Philip Wahab
Auto Maculate Inc. and
Stephanie Wahab:

For the Appellant, Philip Wahab: The Appellant himself

Counsel for the Respondent: Kevin Hong

JUDGMENT

In accordance with the attached Reasons for Judgment:

- (a) Philip Wahab's appeal made under the *Excise Tax Act* of the reassessment of the GST/HST reporting period ended December 31, 2008 (Court File No. 2017-4959(GST)I), and Auto Maculate Inc.'s appeal made under the *Excise Tax Act* of the reassessment of its GST/HST reporting period ended December 31, 2010 (Court File No. 2017-4985(GST)I) are allowed and the reassessments are referred back to the Minister of National Revenue for reassessment on the basis that the unreported sales for GST/HST purposes are the same as their unreported income under their income tax assessments for the 2008 and 2010 taxation years, respectively;
- (b) Philip Wahab's appeal under the *Excise Tax Act* of the reassessment of the GST/HST reporting period ended December 31, 2009 (Court File No. 2017-4959(GST)I) and Auto Maculate Inc.'s appeal made under the *Excise Tax Act* of the GST/HST reporting period ended December 31, 2009 (Court File No. 2017-4985(GST)I) are dismissed;
- (c) Philip Wahab's income tax appeal (Court File No. 2017-1330(IT)I) is disposed of as follows:
 - i) his appeal from reassessments made under the *Income Tax Act* for his 2008 and 2010 taxation years is dismissed; and

- ii) in accordance with subsection 171(2) of the *Income Tax Act*, and Mr. Wahab's agreement made pursuant to section 146.1 of the *Tax Court of Canada Rules (General Procedure)*, his appeal from the reassessment made under the *Income Tax Act* for his 2009 taxation year is dismissed insofar as the appeal relates to the unreported business income and the arrangements with North American Financial Group;
- (d) Stephanie Wahab's appeal from reassessments made under the *Income Tax Act* for her 2009 and 2010 taxation years (Court File No. 2017-1331(IT)I) is dismissed;
- (e) Auto Maculate Inc.'s appeals made under the *Income Tax Act* for the taxation year ended December 31, 2009 (Court File No. 2017-2850(IT)I) and for the taxation year ended December 31, 2010 (Court File No. 2017-1005(IT)I) are dismissed; and
- (f) The Respondent shall have 30 days from the date of this Judgment to make submissions on costs, and shall send a copy of those submissions to the Appellants immediately after they are filed with the Court. The Appellants shall have 30 days thereafter to make submissions on costs if they wish to do so. If the Respondent chooses not make submissions, no costs shall be awarded to any party.

Signed at Ottawa, Canada, this 18th day of September 2020.

"K.A. Siobhan Monaghan"

Monaghan J.

Citation: 2020 TCC 105
Date: 20200918
Dockets: 2017-1005(IT)I
2017-2850(IT)I
2017-4985(GST)I

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Dockets: 2017-1330(IT)I
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AND BETWEEN:

PHILIP WAHAB,

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Respondent;

Docket: 2017-1331(IT)I

AND BETWEEN:

STEPHANIE WAHAB,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Monaghan J.

I. THE REASSESSMENTS AND APPEALS

[1] Philip and Stephanie Wahab (“the Wahabs”) and Auto Maculate Inc. (“Inc.”), a corporation jointly owned by the Wahabs, were reassessed based on a net worth assessment. The Minister’s position is that the Auto Maculate¹ business, initially operated by Philip Wahab as a sole proprietor, and later operated by Inc., did not report all of the income earned.

[2] The reassessments under appeal include the 2008, 2009 and 2010 taxation years for Mr. Wahab, the 2008 and 2009 reporting periods for Mr. Wahab, the 2009 and 2010 taxation years for Mrs. Wahab, and the 2009 and 2010 taxation years and reporting periods for Inc.

[3] The Minister added unreported business income from the sole proprietorship to Mr. Wahab’s income in 2008 and 2009. Because the Auto Maculate business was transferred to Inc. in October 2009, the Minister added unreported business income to Inc.’s income in 2009 and 2010. (The unreported business income for 2009 was allocated as to 75% to Mr. Wahab and as to 25% to Inc. based on the part of 2009 they carried on the Auto Maculate business.).

[4] Because the Wahabs each own 50% of Inc.’s shares, one-half of Inc.’s unreported income was also added to the income of each of the Wahabs in 2009 and 2010 on the assumption that they used the resulting funds for personal expenses.

[5] The reassessments under the *Excise Tax Act* (Canada) (the “ETA”) seek HST on the unreported business income that the Minister assessed to Mr. Wahab in 2008 and 2009 and to Inc. in 2009 and 2010.

[6] Neither party put the reassessments under appeal in evidence. However, based on the Reply:

Philip Wahab’s income tax reassessment is dated December 23, 2016, and was issued following his objections to assessments dated March 18, 2013;

¹ In these reasons, Auto Maculate refers to the business and Inc. refers to the corporate Appellant that carried on the Auto Maculate business commencing in October 2009.

Stephanie Wahab's income tax reassessment is dated November 2, 2016 and was issued following an objection to a reassessment dated March 14, 2013;

Inc.'s 2009 income tax reassessment is dated March 6, 2013 and was confirmed on April 4, 2017 following Inc.'s objection;

Inc.'s 2010 income tax reassessment is dated December 5, 2016 and was issued following Inc.'s objection to a reassessment dated March 6, 2013; and

the reassessments under the ETA were issued in 2013 to Mr. Wahab and Inc.

[7] The income tax reassessments under appeal include the following amounts of unreported income:

| | | | |
|----------------------------|-----------------|-----------------|-----------------|
| <i>Philip Wahab:</i> | 2008 - \$25,265 | 2009 - \$11,727 | 2010 - \$17,954 |
| <i>Stephanie Wahab:</i> | | 2009 - \$1,675 | 2010 - \$17,955 |
| <i>Auto Maculate Inc.:</i> | | 2009 - \$3,351 | 2010 - \$35,909 |

[8] Although the Wahabs and Inc. were reassessed for income tax purposes in 2016, no new reassessments of HST were issued. Thus, the HST appeals are from the 2013 reassessments.

[9] The Respondent has conceded that the income tax reassessment of Mr. Wahab's 2008 taxation year was issued beyond the normal reassessment period but contends that the reassessment is valid because Mr. Wahab's 2008 return included misrepresentations attributable to carelessness, neglect or wilful default.

[10] The reassessment of Mr. Wahab's 2009 taxation year includes an assessment related to charitable donation tax credits. However, that aspect of Mr. Wahab's appeal is governed by an agreement Mr. Wahab made pursuant to Rule 146.1 of the *Tax Court of Canada Rules (General Procedure)* (the "Rules") to be bound by the lead case. Accordingly, for his 2009 taxation year, this decision deals only with Mr. Wahab's other issues related to the appeal of his 2009 income tax reassessment.

[11] Finally, the Appellants have each been assessed penalties under subsection 163(2) of the *Income Tax Act* (the “Act”) and Mr. Wahab and Inc. have been assessed penalties under section 285 of the ETA.

II. CONCESSIONS ON HST ASSESSMENTS

[12] In 2013, the Minister reassessed Philip Wahab and Inc. in respect of unremitted HST on unreported business income. The reassessments increased Philip Wahab’s taxable sales in 2008 and 2009 by the same amount as he was assessed for unreported business income in those years under the income tax reassessments. Similarly, the reassessments increased Inc.’s taxable sales in 2009 and 2010 by the amount added to Inc.’s income as unreported business income in those years under the income tax reassessments.

[13] The Minister’s 2016 income tax reassessments reduced Mr. Wahab’s unreported business income in 2008 and Inc.’s unreported business income in 2010. However, new HST reassessments were not issued in 2016.

[14] On the 5th day of the hearing of the appeals, Respondent’s counsel conceded that the HST reassessments under appeal had not been updated to take into account changes made to the income tax reassessments following the objections. In particular, the Respondent concedes that Mr. Wahab’s 2008 HST reassessment should be adjusted by reducing the unreported sales in the period ended December 31, 2008 from \$412,986 to \$378,212. This \$34,774 reduction matches the reduction in Mr. Wahab’s unreported income for income tax purposes for 2008 following objection, and is reflected in his 2008 income tax reassessment under appeal.

[15] Similarly, the Respondent concedes that the 2010 HST reassessment of Inc. should be adjusted by reducing the unreported sales in the period ended December 31, 2010 by \$2,070. This \$2,070 reduction matches the reduction in Inc.’s unreported income for income tax purposes for 2010 following objection, and is reflected in Inc.’s 2010 income tax reassessment under appeal.

[16] Accordingly Mr. Wahab’s appeal of the reassessment of his HST reporting period ended December 31, 2008 and Inc.’s appeal of the reassessment of its reporting period ended December 31, 2010 will be allowed to the extent of the Respondent’s concessions.

III. ASSUMPTIONS OF FACT IN THE REPLIES

[17] In reassessing the Wahabs and Inc., the Minister made a number of assumptions common to all of the reassessments. Many of the assumptions were not controversial and were accepted by the Wahabs explicitly. No evidence was led to contradict certain other assumptions and accordingly I have accepted them as proven.

[18] Most notably, the Appellants did not dispute the Respondent's assumptions regarding the fair market value of their assets or liabilities as at the end of each of the 2007, 2008, 2009 or 2010 taxation years, or the increase in their net worth, except in very limited ways as described in more detail below.

[19] The Minister's assumptions regarding assets and liabilities may be summarized as follows:

| | As of December 31, 2007 | As of December 31, 2008 | As of December 31, 2009 | As of December 31, 2010 |
|--------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Assets | \$423,736.88 | \$627,898.78 | \$1,131,535.78 | \$1,129,180.06 |
| Liabilities | \$156,845.85 | \$153,135.73 | \$519,538.80 | \$428,776.60 |
| Net Worth | \$266,891.03 | \$474,763.05 | \$611,996.98 | \$700,403.46 |
| Net Worth Prior Year | | \$266,891.03 | \$474,763.05 | \$611,996.98 |
| Increase in Net Worth | | \$207,872.02 | \$137,233.93 | \$88,406.48 |

[20] The Wahabs' only quarrel with the increases in net worth related to additional assets at the end of 2007 that they assert were not taken into account, resulting in an overstatement of the increase in net worth over the course of 2008.

[21] The primary focus of the Appellants' appeals was to explain the increases in net worth by identifying i) additional non-taxable sources of cash and ii) lower personal expenditures than those assumed by the Minister.

[22] The Minister assumed the Wahabs' personal expenditures in 2008, 2009 and 2010 were \$28,202.54, \$23,002.49 and \$43,350.18, respectively.² The assumption regarding personal expenditures that the Appellants contested with vigour was the amount spent on food at grocery stores.

[23] The Minister's income tax assessments assume that the Wahabs' personal expenditures on food (other than in restaurants) in 2008, 2009 and 2010 were \$5,420, \$5,430 and \$5,561, respectively. The Wahabs contend they spent significantly less.

[24] The Wahabs also argued that some expenses the Minister treated as personal were not personal expenditures, but rather related to income-earning activities.

IV. BACKGROUND FACTS

[25] Stephanie and Philip Wahab married in the summer of 2007, following which Stephanie moved from her parents' home in Ohio to Canada. In the spring of that same year, Philip had started Auto Maculate as a sole proprietorship.

[26] Once Stephanie Wahab moved to Canada, she became an employee of the sole proprietorship and, following the incorporation of the Auto Maculate business in late 2009, an employee of Inc. Accordingly, she had employment income in 2007, 2008, 2009 and 2010. Philip Wahab reported business income until the sole proprietorship was incorporated in October 2009. Thereafter Inc. reported business income and the Wahabs reported income as employees of Inc. Stephanie and Philip Wahab are equal shareholders of Inc.

[27] The Auto Maculate business was described as the business of touch-up cleaning of cars for dealerships with a focus on used cars in dealership lots. Philip Wahab said he came up with the idea after visiting a franchise show in late 2006. Once a car has been cleaned and detailed by the dealership, Auto Maculate is responsible for any touch-up cleaning and to maintain the cleanliness it places plastic masking over the car floormats below the front seats. Mr. Wahab visits the dealerships weekly to determine whether new used cars on the lot need cleaning and whether the masking on other cars needs replacing, for example because of intervening test drives.

² See paragraph 31(ff) and Schedule E to the Reply in Philip Wahab's income tax appeal (2017-1130(IT)D); this Reply was used as a guide throughout the appeals.

[28] At the outset, Auto Maculate's business did not detail or "deep clean" cars. The dealerships did that. Auto Maculate then tidied them up, placing the plastic masking over the floormats and, in some cases, added a "carpet" with the relevant dealership's logo over the masking. However, this changed in 2008 when Auto Maculate assumed the relevant detailing staff of a large client and took on responsibility for detailing cars. Mr. Wahab described the Auto Maculate business as taking off in 2008, securing this client being an important driver of the increase in revenues.

[29] The Auto Maculate business reported modest revenues in 2007 but revenues increased significantly in 2008, with 2008 having the highest reported revenues of any of the years under appeal. In 2007, reported revenues were \$33,098, but in 2008 they exceeded \$320,000. Mr. Wahab said revenues fell in 2009 and 2010 (\$192,238 reported) with the downturn in the economy and the loss of a significant customer part way through 2009.

[30] Mr. Wahab purchased his first house (the Andros Property) at the end of 2006,³ initially as a property to be rented out but later to live in as their personal residence. By the time he purchased it, he had met Stephanie Wahab but they were not yet married or engaged. The Wahabs moved into the Andros Property as their first home about a month following their wedding. Both lived with their parents before that. They rented the lower level to a tenant.⁴

[31] In December 2009, the Wahabs purchased a second property in Mississauga (the Yarrow Property) which became their home. They did not sell the Andros Property but found tenants for the upper level where the Wahabs had resided. The lower level of the Yarrow Property was also rented to tenants. Thus, in each of the years in issue, the Wahabs reported rental income for income tax purposes.

[32] The Wahabs had two children in the tax years under appeal, their first in 2008 and the second in 2009. Mrs. Wahab described her pregnancies as very difficult in the sense that she was very ill and unable to do very much. She said her tasks with Auto Maculate were undertaken at home and might be described as clerical or administrative. She completed these tasks sitting in a living room chair

³ See note 33.

⁴ There was some suggestion the upper level was rented out on a short-term basis as well until the Wahabs moved in, but nothing turns on that as they lived in the upper level before the taxation years in issue.

or on the sofa. She described herself as too ill to go out and too ill to eat very much.

[33] Prior to marriage, Mr. Wahab said he spent approximately two years doing missionary work, which took him to Europe, the Middle East, and the United States. His tax returns indicate very modest taxable income in those years – less than \$20,000 in each of 2005, 2006 and 2007.

[34] Prior to this missionary work, Mr. Wahab worked as a financial analyst for approximately two years with a company known as Deluxe Laboratories. He said his salary during this time was about \$45,000 annually. He also said that it was during his tenure at Deluxe Laboratories, and with their encouragement and support, that he obtained his certified management accountant (CMA) designation. Although Mr. Wahab said he had other full-time employment before this position with Deluxe Laboratories, he did not provide any details as to the nature of that work or his remuneration.

[35] Mr. Wahab described his post-secondary education as being three years in a college program in general business administration, which he applied towards a university degree which he was awarded after six months, and later courses associated with his CMA designation.

[36] Mrs. Wahab grew up in an Amish/Mennonite community in Ohio. She lived with her parents until she married and described their lifestyle in Ohio as a simple country life. She lived on a farm with goats; they grew some of their own food. She was home schooled and did not attend post secondary school. Prior to her marriage, Mrs. Wahab did voluntary work as a teacher's helper and then voluntary mission ministry work. It was through the mission that she met Mr. Wahab in 2006. The only remunerative work she spoke about before marriage was making and trying to sell candles with her mother and sister.

V. POSITIONS OF THE PARTIES

[37] The Minister's position is that the income reported by the Wahabs was not sufficient to support their lifestyle. As a result, the Minister asserts that the Wahabs had additional unreported income which explains the annual increase in net worth.

[38] The Wahabs state they had no unreported income and that they in fact over-reported their income. They contend their personal expenditures are very low,

and in particular their expenditures on groceries, clothing and household items are very modest. They also contend that the Respondent made many errors in the net worth assessment.

VI. EVIDENCE

[39] These appeals were heard over seven days commencing in December 2018 and ending in September 2019.

[40] Unlike some net worth assessments, these appeals were not ones in which the Appellants came to the Court without documentation. Four volumes of documents were produced by the Wahabs. However, the quantity of the documents has no bearing on the appeal. What is key is the quality of the documents and the facts established by those documents and the oral evidence. In this case, the quality of the documents leaves much to be desired.

[41] Many of the documents were irrelevant to the appeals, their focus being to criticize what the Appellants perceive as delays and errors on the part of the Canada Revenue Agency (“CRA”) in the course of the audit⁵ and following their notices of objection to the initial reassessments.

[42] The Appellants had documents Mr. Wahab created for purposes of persuading the auditor⁶ or for purposes of the appeals, rather than the original documents he claimed to have used to create those documents.⁷ The Appellants

⁵ The auditor had a contrary view, suggesting the Appellants were the cause of the delays.

⁶ For example, Mr. Wahab claims he made a \$4,000 loan to a Mr. Voung in 2008, although the loan was not documented in writing. Mr. Wahab said that he and Mr. Voung then agreed the latter would provide consulting services to Auto Maculate in connection with what Mr. Wahab termed “hiring and firing”. Mr. Wahab claimed that he and Mr. Voung agreed the \$4,000 loan payable would be offset against Mr. Wahab’s obligation to pay Mr. Voung for those consulting services. While the money was apparently advanced in 2008, Mr. Wahab admitted he prepared documentation in 2012 to support the arrangement he described. That documentation is an invoice dated July 1, 2008 issued by Auto Maculate for services purportedly provided by Mr. Voung. The note purportedly signed by Mr. Voung confirming this arrangement is dated December 1, 2012, is not on Mr. Voung’s letterhead, and contains no address or other details for Mr. Voung. See Exhibit A-41.

⁷ See Exhibit A-29, sampling list of garage sale purchases over 2007 – 2010. See Exhibit A-40, consisting of emails written in November 2018, regarding \$1,000 Mr. Wahab claims was a gift

also tended to be selective about the parts of documents they brought to the Court, often omitting pages.⁸ Emails were missing attachments notwithstanding that they were submitted to establish that the attachments had been sent to the person to whom the email was addressed.⁹ Email chains also excluded some of the emails in the chain.¹⁰ Documents were signed only by the Appellants and not by the other parties.¹¹ The Appellants produced many photographs of items they suggest may be purchased at salvage stores and garage sales or obtained from church ministries.¹² But, there is no evidence the photographs were taken in the years under appeal. Moreover, these photographs only establish that these sources of food and goods exist, not that the Appellants used those sources to the extent they claimed. The same comment applies to the sample grocery receipt, which was from 2016.¹³ A receipt for car batteries appears to be in Mr. Wahab's handwriting although it purports to be from Crosstown Battery Sales, presumably a business that would have preprinted invoices and receipts.¹⁴

[43] As a result, I give little weight to most of the documents the Appellants provided.

[44] Three witnesses appeared for the Appellants, Philip and Stephanie Wahab, and Philip Wahab's brother, Roy Wahab. The Respondent's only witness was Amanda Yuan, the principal auditor for the audit leading to the reassessments of the three Appellants.

from Mr. Wood and see Exhibit R-5 consisting of a list of items sold on Kijiji or Craigslist and cash gifts received.

⁸ For example, several of the letters prepared by accountants the Appellants engaged to advocate on their behalf did not include any attachments. See Exhibit A-11. Exhibit A-24 contains two tenancy agreements of two pages. Each of them appears to be missing a page, as the signing page contains the header "Continued (3 of 3)". The one dated November 18, 2009 is also missing handwritten additions noted as being part of the agreement on the signing page.

⁹ For example, see Exhibit A-20.

¹⁰ See Exhibits A-39 and A-18.

¹¹ See Exhibit A-39, which includes a document the Appellants claim substantiates a rebate they received from a realtor when they purchased the Yarrow Property, signed only by the Wahabs, but not by the realtor.

¹² See Exhibits A-26 and A-27.

¹³ See Exhibit A-28.

¹⁴ See Exhibit A-45.

VII. INSTITUTION OF THE AUDIT AND AUDIT HISTORY

[45] Ms. Yuan conceded that the audit arose as a result of a referral from an unidentified source. Mr. Wahab sought to discredit the audit for that reason, suggesting that the referral came from a source who knows nothing about the Auto Maculate business but had another reason for seeking “revenge” on the Wahabs. The source was not identified by Ms. Yuan, and Mr. Wahab may well have his suspicions. But, he could not prove his proposition and in any case, as I explained to him, even if he could establish that were true, that is not a sufficient basis to allow the appeals.

[46] Mr. Wahab also complained about the size of the initial reassessment proposal put to the Appellants and that the auditor and CRA Appeals had not accepted all of the arguments the Appellants themselves, and an accounting firm they engaged to assist them, put to the CRA. However, Mr. Wahab concedes that the reassessments under appeal reflect significantly less income than had been initially proposed by the auditor, and less than the amounts in the 2013 reassessments, which assessed less income than the auditor had initially proposed.

[47] It is clear that only the final assessment can be the subject of the appeal. Interim assessments, proposals, or opinions expressed by the auditors or the appeals division of CRA cannot be relied upon to establish the invalidity of the final reassessment.¹⁵

[48] Ms. Yuan testified that the audit had taken approximately 18 months and that she had some difficulty obtaining certain documents from the Wahabs. While she agreed that she received many documents from the Wahabs, the documents were incomplete, unorganized and, in her view, did not constitute adequate books and records.

[49] Mr. Wahab said that the books and records they maintained consisted of summary excel spreadsheets, invoices, credit card statements and bank account statements.¹⁶ Unfortunately, with the exception of some bank statements, Paypal

¹⁵ *Hawkes v. The Queen* [1997] 2 CTC 133 (FCA), at para 11. See also *Ludmer v. Canada* [1995] 2 FC 3 (CA).

¹⁶ Mr. Wahab’s evidence evolved on this topic as well. The records he claims he maintained kept expanding over the course of the seven days the appeals were heard.

statements and some invoices,¹⁷ he did not bring any of the other records he described to the Court.

[50] Mr. Wahab also attempted to discredit the validity of the assessment by pointing out that matters that Ms. Yuan had identified as “red flags” should not have been viewed as such, even though those “red flags” did not themselves affect the amount of unreported income assessed.

[51] Ms. Yuan said she thought the Wahabs’ answers to her questions evolved over time.

[52] Ms. Yuan testified her bank account analysis indicated bank deposits exceeded reported income in 2007, 2008 and 2009.¹⁸ Cash withdrawals from bank accounts declined significantly over the audit period. The documentation relating to the arrangement with Mr. Voung¹⁹ raised questions because while she saw a copy of a cheque payable to Mr. Voung, the invoice for services apparently rendered by Mr. Voung was an Auto Maculate invoice.

[53] Ms. Yuan stated that the sum of all withdrawals from the Wahabs’ bank accounts²⁰ and all amounts charged to their credit cards in 2008 was approximately \$24,000 less than the amount claimed as expenses in computing business income and rental income. In other words, income-earning expenses deducted in 2008 exceeded all bank and credit card expenditures in 2008 by approximately \$24,000.²¹ Ms. Yuan viewed this as a “red flag” because this discrepancy existed without taking into account any personal expenditures which only would have increased the discrepancy. Throughout the appeal, this was referred to as the \$24,000 issue.

(a) The \$24,000 Issue

[54] Mr. Wahab spent considerable time on this issue although it did not affect the amount of the assessment. He said that part of this discrepancy was explained

¹⁷ Both issued to and issued by Auto Maculate.

¹⁸ In 2010, deposits were less than reported income.

¹⁹ See note 6.

²⁰ Cash, cheque or other.

²¹ Ms. Yuan said in determining this amount she excluded non-cash expenditures such as capital cost allowance.

by expenses deducted in computing 2008 income but not paid until 2009. The primary example was payroll-related expenses.²²

[55] But faced with the explanation that the \$24,000 discrepancy did not take into account any personal expenditures, Mr. Wahab tended to pick out numbers from the auditor's 2009 working papers and suggest that they also were 2008 business or rental expenses deducted in 2008 but not paid until 2009, more than ten years after the relevant event. For example, he claimed that a cheque that cleared the bank account in March 2009 related to a vehicle purchased in 2008. I am skeptical the seller would wait until March 2009 to cash a cheque for a vehicle purchased in December 2008, but in any event the cost of a vehicle would not be a deductible expense in the tax return and so would not be part of the discrepancy. Similarly, Mr. Wahab found a reference to a cheque for \$1,181 that cleared the bank account in January 2009. Mr. Wahab said that related to replacing the tenant's garage door in 2008. How would he remember that more than a decade later? Is it clear this amount was deducted as a repair rather than capitalized as a replacement? Mr. Wahab had no other evidence supporting these claims.

[56] I, of course, accept that some of the expenditures identified by Mr. Wahab as relating to 2008 were paid in 2009. But, that presumably would have been true every year. However, even if I accept all of the amounts he alleged fell into this category, and ignored any similar 2007 expenses that might have been paid in 2008²³, that is not enough to fully explain the discrepancy because it accounts for no personal expenditures.²⁴

[57] Moreover, this analysis does not directly impact the quantity of the assessed income under the net worth assessment. Each of these items were "red flags" Ms. Yuan identified in the course of her audit. I do not see anything inappropriate in that characterization by Ms. Yuan.

²² Predominantly payroll-related remittances to governments and payroll cheques issued to Mrs. Wahab dated December 31, 2008. The latter account for more than \$23,000.

²³ While business amounts of this nature might have been lower in 2007 because the Auto Maculate revenue in 2007 was modest compared to 2008, Mr. Wahab includes in this category expenses related to the rental properties as well. I simply do not know what the 2007 amount would be.

²⁴ The reassessment assumes personal expenditures of \$28,202 in 2008. Mr. Wahab claims it should be significantly lower but certainly not zero.

VIII. CREDIBILITY

[58] Net worth assessments often rest on the credibility of the appellants and the other witnesses. While in these appeals a lot of documentary evidence was produced, most of it was not of a quality sufficient to rebut the Minister's assumptions. Accordingly, in this appeal, the credibility of the witnesses plays a critical role.

[59] *Nichols v The Queen*²⁵ contains a useful description of some of the factors that should be considered in assessing credibility:

In assessing credibility I can consider inconsistencies or weaknesses in the evidence of witnesses, including internal inconsistencies (that is, whether the testimony changed while on the stand or from that given at discovery), prior inconsistent statements, and external inconsistencies (that is, whether the evidence of the witness is inconsistent with independent evidence which has been accepted by me). Second, I can assess the attitude and demeanour of the witness. Third, I can assess whether the witness has a motive to fabricate evidence or to mislead the court. Finally, I can consider the overall sense of the evidence. That is, when common sense is applied to the testimony, does it suggest that the evidence is impossible or highly improbable.²⁶

[60] Applying those criteria to the evidence before me, I did not find Stephanie and Philip Wahab to be particularly credible witnesses. My impression of them is that they are more sophisticated, clever and knowledgeable than they sought to appear.

[61] While claiming to be people with modest means, great generosity, simple tastes, a very frugal lifestyle and a certain naiveté regarding business matters, the evidence suggests otherwise. Indeed, the Wahabs do not dispute that their net worth grew significantly (by more than \$415,000) in three years.²⁷

[62] Ms. Yuan, the auditor and the only witness for the Respondent, was not a perfect witness, but I found her testimony more credible than that of the Wahabs. Ms. Yuan explained that following the referral she looked at the Wahabs' tax files,

²⁵ 2009 TCC 334.

²⁶ *Ibid.*, para 23.

²⁷ The Minister assumes an increase in excess of \$433,000, but the Wahabs dispute approximately \$17,600 of that amount. As will be seen, I do not agree with the Wahabs on that \$17,600.

sought an Equifax credit check, and conducted a property search to determine whether an audit was warranted. She then sought records from the Wahabs. While they sent her three boxes of documents, the documents were incomplete and unorganized. Because of this, the CRA decided to proceed with a net worth audit.

[63] Information requests were issued to the Canadian banks, but could not be issued to US financial institutions. Ms. Yuan explained what she reviewed. She summarized more than 6,000 transactions over the four-year audit period.²⁸ She completed a bank deposit analysis and observed that the deposits exceeded reported income.²⁹ She dealt with several rebuttals from the Wahabs and their accountants.

[64] Ms. Yuan said she accepted any expenditures claimed on the income tax returns for the rental properties and business, although in some cases she was not provided with supporting documentation. She said she also gave the Wahabs the benefit of the doubt³⁰ even though their answers to some of her questions changed over time³¹ and some of the documentation Mr. Wahab provided to her did not make sense in the context of what he told her it was intended to substantiate, one example being documentation related to arrangements with Mr. Voung.³² Ms. Yuan described these documents as adding to her concerns about the taxpayers' books and records. Ms. Yuan also claimed she never received all bank, credit card and Paypal statements and, had she had them, she would have increased income.

[65] Aspects of Ms. Yuan's testimony that were not disputed by the Appellants include the following:

1. During the audit period the Appellants had at least 16 Canadian bank accounts, two US bank accounts, eight investment accounts, six Canadian credit cards and four U.S. credit cards;

²⁸ 2007 was part of the audit but was not reassessed.

²⁹ For 2007, 2008 and 2009 the excess was quite significant. This was not true in 2010, when reported income was greater than deposits.

³⁰ Consistent with this testimony, in reassessing the Wahabs, the Minister accepted clothing expenditures of approximately \$700 and personal care expenditures of less than \$165 over the three years. These strike me as very modest amounts.

³¹ See Exhibit A-5.

³² See note 6.

2. Cash withdrawals from their bank accounts decreased over the audit period. In 2007 they withdrew \$7,655, in 2008 \$6,282, and in 2009 \$4,525. In 2010, only \$150 was withdrawn in cash by the Wahabs from all of their bank accounts;
3. They purchased two homes, one in 2006 and one in 2009;³³ and
4. They made personal investments of approximately \$134,000 in 2008, \$225,000 in 2009 and \$24,000 in 2010.

[66] Before I provide some specific examples of matters that undermine the credibility of the Appellants' evidence, some general observations may be made. The Appellants' evidence was not internally consistent. Mr. Wahab's statements regarding certain key matters were sufficiently different from Mrs. Wahab's statements as to cast their testimony into doubt.

[67] Mr. Wahab tended to change or add gloss to his own testimony over the course of the appeals. He tended to characterize documents in a particular manner, emphasizing parts that supported his testimony while ignoring parts that clearly suggest something else.³⁴ This approach leads me to infer that when Mr. Wahab chose to bring only parts of documents, or chose to bring summaries of documents, rather than copies of the original documents, the missing parts or original documents would undermine his evidence concerning the documents.

[68] Mr. Wahab in particular tended to want to provide answers to questions. This led him to contradict himself several times, or to provide answers that simply were not plausible.³⁵

[69] Mr. Wahab's attitude and demeanor changed under cross-examination. He became defensive, seeming to take offence to several questions, none of which were inappropriate, in my view. He also often avoided answering the question

³³ The Minister assumed the first house was purchased in 2007. Mr. Wahab testified it was 2006 but nothing turns on that as neither 2006 nor 2007 were reassessed. The house was considered an asset at the end of 2007, the base year for the net worth assessment. The Wahabs did not dispute its value for that purpose.

³⁴ Mr. Wahab used highlighter to emphasize parts of documents he thought helped his case. But the other parts of the documents often undermined his testimony.

³⁵ The garden behind his brother's house being but one example.

posed and talked around it, leaving me with the impression he was searching for an answer. Moreover, while he often said he could not remember things from a decade earlier (understandably), other items he insisted he could recall. And, yet there was nothing particularly remarkable about the matters he said he recalled³⁶ compared to matters one might think he would recall.³⁷

[70] Mrs. Wahab's direct testimony generally was consistent with Mr. Wahab's testimony when it came to a description of their lifestyle. However, Mrs. Wahab frequently claimed she did not remember details or simply had no knowledge of the key relevant facts: she did not know her income; she did not know how much money or what investments they had; she did not know the cost of groceries or other household items; and she rarely shopped or used her credit card relying instead on \$10 cash in her wallet.

[71] However, their testimony did differ in some key respects. On the one hand, Mrs. Wahab testified her only roles with Auto Maculate were to copy type Mr. Wahab's handwritten invoices and help set up a website. In her words it was no more than "copy and paste". She would "look, see, type what I saw". On the other hand, Mr. Wahab described her as working with spreadsheets, emailing customers, following up on invoices, doing research for him on dealerships, and maintaining an up-to-date list of outstanding invoices.

[72] She also provided assistance with documents in the course of the appeal, identifying quickly for Mr. Wahab items he was seeking to find in his volumes of documents. I do not believe Mrs. Wahab is as naïve and unsophisticated about financial matters as she tried to suggest in her testimony.

[73] The Wahabs claim Mrs. Wahab was too sick to leave the house for most of 2008 and 2009, and that Mr. Wahab was working night and day getting his business going, and running the rental properties. Yet, they claim they had time to go to garage sales every weekend from mid-May to mid-September, that they could find parking right in front of the garage sale so Mrs. Wahab would not have to get out of the car, Mr. Wahab had time to volunteer with food ministries and to source food from those ministries that would otherwise be thrown away, and they

³⁶ One example being a garage door for a rental property he said was installed in 2008 but paid for in 2009, and cost \$1,181, based solely on looking at the auditor's working pages under cross-examination. How would he remember when the garage door was replaced and how much it cost?

³⁷ For example, when the Wahabs were the subject of a fraud related to bank accounts.

had time to travel to Ohio to visit Mrs. Wahab's parents and buy food at salvage stores.

[74] In my view, when common sense is applied to the testimony and the evidence, it is highly improbable that the Wahabs spent as little as they claim to have spent or that they were able to acquire and sell as many items as they say they could at garage sales, or through other sources they identified.

[75] Let me turn to some specific examples that have led me to conclude that Philip and Stephanie Wahab were not credible witnesses.

(a) Credit Cards

[76] Over the relevant taxation years the Wahabs had some sixteen credit cards. One of the explanations for the number of credit cards was a stated desire to keep the credit cards for business, rental and personal expenditures separate. A second explanation was an identity fraud that Mr. Wahab said occurred during the relevant taxation years causing them to stop using particular credit cards and to apply for new cards.

[77] While Mr. Wahab and Mrs. Wahab had separate credit cards, many of them were companion cards. For example, Mr. and Mrs. Wahab had companion BMO Mastercards (Canadian) and Capital One Mastercards (US). In 2009 and 2010 there were four BMO credit cards, two in each of Mr. and Mrs. Wahab's name.

[78] Mrs. Wahab claimed that any credit cards she had were companion (or as she called them shared) cards. She suggested she never used the credit cards except to purchase gas or in an emergency situation, or perhaps occasionally to pick up something at the grocery store when she was out with her children. And yet, Mrs. Wahab had a credit card before she was married, so she must have had experience with and a previous need or desire for a credit card. Moreover, many of the charges at fast food restaurants were on her cards.³⁸

[79] Mrs. Wahab suggested any credit card in her name was for personal purposes only; that is, she said one of the ways they distinguished personal expenditures from expenditures related to the rental properties or the business was to use the card in her name for personal expenditures. While this explanation has

³⁸ See Exhibits A-17, A-42, A-43 and A-44.

some appeal and could be consistent with her testimony that she never used credit cards,³⁹ the documentary evidence does not support her testimony. Many charges on the credit cards in Mr. Wahab's name were clearly personal. Most of the expenditures on her credit cards - and virtually all of the significant ones - were clearly business-related.⁴⁰ While both Wahabs stated one or more times that Mrs. Wahab did not have a business credit card, Mr. Wahab later said Mrs. Wahab's companion BMO card ending in 0087 was a business card.

[80] Mr. and Mrs. Wahab had three rental properties over the three-year period covered by these appeals. Mr. Wahab explained that they decided to restrict the Canadian Tire credit card to the rental properties. Although Mr. Wahab said he could not be certain when they adopted that practice, he thought it was in 2009. Yet in 2009 and 2010 there are many charges on that credit card that clearly have nothing to do with the rental property and some of which are clearly personal including charges at restaurants, grocery stores,⁴¹ chiropractic clinics, maternity clothing stores, and charities (donations).

(b) Mrs. Wahab's Experience with Financial Matters and the Business

[81] Mrs. Wahab asserted that she knows nothing about and had no interest in numbers or finances. "I am very bad with numbers and spreadsheets and how that all goes together."⁴² She claimed she did not know what salary she was paid in any of the years in question. She described her tasks with Auto Maculate as purely administrative. She said she suffered significantly with sickness during her pregnancies, was largely housebound and resting on a sofa or in an armchair in

³⁹ That is, although they were in her name, Mr. Wahab might have used them. While Mrs. Wahab did not state that explicitly, it might be inferred from what she said but for the evidence of the way in which the cards were used.

⁴⁰ See Exhibits A-42, A-43 and A-44.

⁴¹ In stating this I acknowledge that Mr. Wahab said he purchased pizza a few times for his family members at grocery stores when they assisted with renovating the rental property and that those should be considered rental property expenses. However, there are dozens of charges at grocery stores and restaurants over the three years in issue. Mr. Wahab's testimony on this was also not convincing. He said he rented the unit starting in 2007 (the rental application he submitted is dated April 2007 for occupancy effective May 1, 2007), but also said he was renovating it well into 2008 because it needed laundry facilities, kitchen cabinets and was missing doors. He claims grocery expenses at Dominion as late as June 2008 related to pizza for his brother and parents while they helping him renovate the rental unit.

⁴² Transcript, Vol. 3, page 17.

2008 and 2009, and did what she could to assist Mr. Wahab by preparing Auto Maculate invoices. She described this work as not involving any computations but rather being limited to typing the handwritten notes Mr. Wahab gave her onto an invoice. In her words “it was as close to copying and pasting as you could get.”

[82] However, Mr. Wahab described Mrs. Wahab’s role with Auto Maculate more expansively. He described training her in excel spreadsheets. He said she was responsible for noting which invoices were paid in the excel record they maintained and following up on unpaid invoices. When he described how they kept track of invoices, he said the excel spread sheet had a column with an x indicating the invoice was unpaid, and when it was paid, the x would be removed. Yet, Mr. Wahab also testified that invoices would be in similar amounts because Auto Maculate had a fixed fee for each vehicle. He said that dealerships would sometimes pay more than one invoice with a single cheque, pay older invoices after newer invoices or pay only part of an invoice. If this is all true, then matching cheques to invoices and updating the excel spreadsheet does not seem like something that could be done by someone with absolutely no affinity for or interest in numbers.

(c) Tax Returns

[83] In Mrs. Wahab’s direct testimony, Mr. Wahab asked what involvement she had in preparing her tax returns during the audit years. She replied “you would prepare them for me, and briefly show them to me, and I would sign them.”⁴³ On cross-examination, she agreed that Mr. Wahab completed her tax return and showed it to her but she didn’t understand it even though she said he tried to help her understand it. She said “I just trust that he’s filling them out, and I sign them”.⁴⁴

[84] Yet under cross-examination when Mr. Wahab was presented with Mrs. Wahab’s 2009 tax return he admitted that he did not prepare it and became quite defensive. Although reluctant to do so, when pressed, he conceded that the handwriting on the tax return was Mrs. Wahab’s. He then said he would have been trying to teach Mrs. Wahab how Canadian income tax returns were done and would have coached her through it. Mr. Wahab said that while she would have had the pen in her hand, he would have told her what to put in the boxes.

⁴³ Transcript, Volume 3, page 17.

⁴⁴ Transcript, Volume 3, pages 50 – 51.

[85] I do not find this to be a credible explanation. First, Mrs. Wahab repeatedly said she had no interest or affinity with numbers. She claims to not know how much income she earned or how much groceries cost. Mr. Wahab himself said she was not a “numbers person”. If that is true, I am not satisfied that she or Mr. Wahab would be interested in teaching her how to complete an income tax return, particularly as the return is dated in April 2010 when Mrs. Wahab was caring for an infant and another child under 24 months of age. Until presented with a document inconsistent with their testimony, the evidence of both Wahabs was that Mrs. Wahab had no involvement in the preparation of the income tax returns. Her 2009 income tax return suggests otherwise.

(d) Trip to Cancun

[86] Mr. Wahab advised the auditor they never travelled except to the U.S. However, the Wahabs took a 7-night trip to Cancun in 2010.

[87] Ms. Yuan explained the expenditures on the credit cards were coded as travel, but no additional expenditures were assessed to the Wahabs as a result of this trip. In other words, she accepted the cost of the trip was a total of the amounts charged to the credit card. What troubled her was that he claimed they never travelled except to the U.S. and yet they took a trip to Cancun.⁴⁵

[88] Mr. Wahab claimed the only cost for the food and accommodation associated with the trip was US \$459, consisting of a deposit of US \$299 in 2009 and another US \$159 paid in 2010. This promotion, he explained, was part of a timeshare marketing scheme. The Wahabs were required to attend a presentation at the Cancun resort but, as long as they did, US \$459 covered all of their food and accommodation. This, he suggested, demonstrated their frugality. However, the documentation Mr. Wahab supplied is clear that food is not included in the cost of the trip. The confirmation of the reservation for the Wahabs clearly states “European Plan (accommodations only)”⁴⁶ Again, Mr. Wahab’s testimony is not

⁴⁵ The Minister assumed a trip to Cancun in 2009 and another in 2010. Mr. Wahab explained there was only one trip in 2010, but partially paid for in 2009. However, this assumption in the Reply did not affect the amount assessed.

⁴⁶ See Exhibit A-18. This is an example of a document in which Mr. Wahab has highlighted the parts that support his testimony but not the parts that do not.

consistent with documentation he voluntarily presented to bolster his case, while focusing only on the part of the document that supported his case.⁴⁷

(e) Sources of Food

[89] The Minister reassessed the Wahabs on the basis that their grocery costs were \$5,420 in 2008, \$5,430 in 2009 and \$5,561 in 2010, based on Statistics Canada averages.⁴⁸ Mr. Wahab alleges the amount they spent on food was significantly lower.

[90] The auditor saw grocery charges on credit cards totalling \$1,123 (2008), \$1,198 (2009)⁴⁹ and \$240 (2010). Ms. Yuan said she did not believe that two adults (one of whom was pregnant) at the start of 2008, or two adults and two children by the end of 2010, would spend so little on food.

[91] The Wahabs spent significant time explaining sources of inexpensive food. Prominent among them were salvage stores in Ohio, near Mrs. Wahab's parents' home, and two food ministries at the church they attended at that time.

[92] Mr. Wahab said he and Mrs. Wahab drove to Ohio to visit Mrs. Wahab's parents every two or three months and would stock up on food at the salvage stores. He also said that her parents would visit the Wahabs in Canada, arriving with food from the salvage stores. As the Wahabs described it, the food from salvage stores tends to be very close to, or more typically past its "best before" date and therefore is deeply discounted. The suggestion was that they purchased boxes and boxes of food for pennies on the dollar and that was the source of

⁴⁷ This only goes to credibility, as the net worth assessment did not assess additional personal expenditures as a result of this travel, although clearly there would have been additional costs for meals for seven days.

⁴⁸ These amounts are less than proposed by the auditor. Ms. Yuan had suggested amounts of \$6,069 (2008), \$8,981 (2009) and \$9,197 (2010) based this on a family of three in 2008, and of four in 2009 and 2010. These amounts were reduced by CRA Appeals following submissions by the Wahabs. CRA Appeals who agreed to use amounts for two people although the Wahabs had two small children.

⁴⁹ Mr. Wahab did substantiate that \$490 of the amount the auditor coded as groceries in 2009 related to incorporation of Inc. That would reduce the amount charged to credit cards in 2009 to approximately \$706, but does not help the Wahabs because the Minister assumed they spent \$5,430. The \$490 only increases the portion of the assumed personal expenditures that is not accounted for by credit card receipts. The auditor's error reduced the discrepancy between assumed expenses and what the auditor saw they spent based on her analysis.

significant amounts of their food. Salvage stores only accept cash or, in some cases, cheques.

[93] Both Mr. and Mrs. Wahab also testified that they received food from two food ministries at their church – one which provided frozen meals to people in need and another called Food For Life Program, a ministry for what all three Wahabs described as “the most needy people”. Mrs. Wahab also mentioned that her mother-in-law would bring over meals when she visited or would send food home with them when they visited Mr. Wahab’s family.

[94] Mr. Wahab agreed that more money was spent on groceries than what the credit cards statements indicated, but claimed not much more. He said additional purchases of food (most notably at salvage stores) were \$832 in 2008 and \$670 in 2009. These he said were paid for with cash. Unfortunately he had no evidence to support those amounts other than his testimony.

[95] For 2010, while the amount spent at grocery stores on credit cards was only \$240, Mr. Wahab suggests they spent another \$2,250 in cash at grocery stores and salvage stores. He said that by 2010 they realized they still had cash from their wedding gifts in their home and thought they should start spending it on groceries. That he claims is why credit card purchases at grocery stores fell to \$240 in 2010.

[96] To accept Mr. Wahab’s testimony, they spent only \$1,955 in 2008, \$1,868 in 2009 and \$2,500 in 2010 on food consumed at home.⁵⁰ I think this is an exceptionally low amount.

[97] While I accept that food banks, food ministries and salvage stores may be the source of inexpensive or free food, I am not satisfied that the Wahabs relied, or could rely, on these sources to the extent they claimed. Let me explain why.

[98] None of the items in Mr. Wahab’s pictures of salvage store items demonstrates the breadth of food available he claimed they purchased there. For example, none showed fresh food items. Roy Wahab testified that he had been to salvage stores occasionally, and confirmed they offered very low prices, but described the available items as packaged and processed food. This is the

⁵⁰ They also purchased food at restaurants, both for personal and business/rental purposes.

nature of the items in the pictures Mr. Wahab submitted⁵¹ and his testimony under cross-examination.⁵²

[99] Roy Wahab also described the two church food ministries the Wahabs claimed to have relied on. He agreed that neither the church programs nor the salvage stores could be significant sources of perishable (fresh) food – meat, vegetables or fruit. He said the Food for Life Program at the church might provide bread or pastries or perhaps some soft potatoes, carrots or onions but that those items would be offered to volunteers like his brother, only after the truly needy had helped themselves to the available food. He was clear that none of the Wahabs qualified for food from the Food for Life Program, because they were not needy enough, but said volunteers could take leftover food, that would otherwise be thrown away. I simply do not accept these food ministries were a source of significant food for the Wahabs, and certainly not of fresh food.

[100] So what was the evidence about other sources of fresh food?

[101] The Wahabs do not deny that they purchased fresh food at the grocery store, but suggested that they purchased very little there, and only purchased things on sale, that had been significantly marked down. Mrs. Wahab said she never did the grocery shopping; she might only pick up milk or something that they really needed if she was out. She said she went to the grocery store only a handful of times a year. Mrs. Wahab described Mr. Wahab as the primary shopper and skilled at finding very good prices by shopping the sales.

[102] Yet the credit card analysis shows that in 2008 groceries were purchased with credit cards on more than 75 occasions; there are multiple purchases every month – sometimes several in a single week. In my view, this cannot be described as occasional purchases to fill in the gaps. In 2009, the number of credit card purchases for groceries fell to about 40, and in 2010 to about 15, yet the family was growing in size. The explanation for this was that more food was being purchased for cash, rather than on credit cards.

[103] Under cross-examination, when asked about fresh food, Mr. Wahab suggested they brought tomatoes, eggs, milk and cases of yogurt from the salvage

⁵¹ For example, cereal, crackers, salad dressings, carbonated beverages, fruit drinks, gum, canned goods, potato chips, chocolate bars, cookies, and similar items. See Exhibit A-26.

⁵² “Well, let’s look at the pictures . . . We bring back anything from cereal, to toothpaste, to toilet paper, to spices . . .”.

stores in the US, notwithstanding that those stores were a four and a half hour drive away and that the food from those stores was described as food where the “best before” date would have passed. I do not accept this evidence, particularly given the evidence about the types of products available at the salvage stores from Roy Wahab, and the Wahabs themselves. Moreover, Roy Wahab described most of the salvage stores as not having electricity, so it seems unlikely perishable foods were available there.

[104] On the sixth day of trial, when asked about the source of fresh produce under cross-examination, Mr. Wahab claimed that he and his brother Roy grew fresh fruit and vegetables in an open field behind his brother’s house. I find this testimony highly improbable. Although both Mrs. Wahab and Roy Wahab were asked about the sources of produce, neither mentioned this garden. Yet, Mrs. Wahab testified she grew up on a farm in Ohio where they grew some of their own food. Similarly, although Mr. Wahab said the garden was in a field behind Roy Wahab’s house, and that Roy Wahab took principal responsibility for watering and tending it because he and Mrs. Wahab were so busy with their business and two young children, Roy Wahab never mentioned it either. And, in the extensive evidence from Roy and Philip Wahab about the lessons in frugality they learned from, and experienced with, their parents growing up, neither Roy nor Philip Wahab ever mentioned growing food.

[105] Finally, Mr. Wahab’s description of this garden is not at all convincing. He suggested that a large unused field behind his brother’s home, admittedly not owned by his brother, was vacant and dormant and that he and his brother decided to cordon off a large square area and start gardening it. Mr. Wahab suggested this was easy, that you plant the seeds and watch them grow, and that the fact that he was so busy with his business was not a problem because his brother took responsibility for the garden once it was planted.

[106] In *Lacroix v. The Queen*⁵³ the Court said “Courts are not required to believe witnesses even if they are not contradicted. Their version may be implausible as a result of circumstances revealed by the evidence, or simply on the basis of common sense”. I do not believe there was a garden.

[107] Mr. Wahab also suggested his uncle gave him meat (beef and venison). Again, this source of perishable food was not mentioned by either Mrs. Wahab or Roy Wahab, notwithstanding that both were asked about sources of perishable

⁵³ 2007 TCC 376, aff’d 2008 FCA 241.

food. I do not believe Mr. Wahab's uncle could have been a source of significant amounts of meat.

[108] Mr. Wahab brought a single receipt from a grocery store to demonstrate that food was purchased at a grocery store on sale.⁵⁴ As admitted by Mr. Wahab, this receipt is from 2016 – well after the taxation years in issue, and well after the first reassessments and the objections. He described it as an example of the typical grocery bill they would have. Yet, this receipt is in many ways inconsistent with the other evidence regarding the Wahabs' food habits.

[109] First, the purchased items include a number of items that do not appear to be on sale. Secondly, it indicates that the Wahabs purchased only one of an item the price of which would have been reduced by a third had more than one been purchased. This seems entirely inconsistent with their other evidence about always seeking the lowest price, not being troubled by food "best before" dates, and keeping stores of food in their home. Thirdly, it includes items that might be considered unusual for people seeking to limit grocery food purchases to fill-in items and perishables. Of particular note is gourmet hummus which Mrs. Wahab herself viewed as remarkable, because her father-in-law taught them how to make hummus so they never bought it.⁵⁵ Finally, the receipt indicates the food was partially paid for by redeeming loyalty points suggesting many other purchases were made at grocery stores to earn points. As a result, this receipt may be typical, or very unusual and selected for that very reason;⁵⁶ there is simply no way to know. It does not help the Wahabs.

[110] To accept the Minister's assumptions regarding food purchases, the Wahabs spent less than \$110/week on groceries. According to the Wahabs' testimony, they spent far less than half of that: approximately \$38/week in 2008, \$36/week in 2009 and \$48/week in 2010. I simply do not accept that evidence.

IX. NON-TAXABLE SOURCES OF MONEY

⁵⁴ Exhibit A-28.

⁵⁵ Admittedly, the receipt indicates it was on sale.

⁵⁶ Mr. Wahab said he picked the receipt to show the CRA Appeals officer "because it was a good one." Ms. Wahab said he probably picked that receipt "because he [Mr. Wahab] found it was a good, long receipt of deals that he found."

[111] One of the two principal arguments advanced by the Appellants is that the net worth assessment does not take into account non-taxable sources of money that they used to fund personal expenditures in 2008, 2009 and 2010.

[112] Mr. and Mrs. Wahab both testified that they spent very little money on food at grocery stores, but rather sourced the vast majority of their food from salvage stores, family, and food programs at their church. According to their testimony, grocery store purchases were rare and the focus was on items that were marked down significantly. The Wahabs also claim to have purchased many household goods, furniture and almost all of their clothing at garage sales so their expenditures on these items were extremely modest. They claim they cut their own hair, made gifts for others, and made some of their own personal care products. I observe that CRA Appeals largely accepted the Wahabs' assertions regarding these categories of expenditure.

[113] Garage sale and salvage store purchases required cash, as did purchases of certain other items on a private basis.⁵⁷ Thus, according to their testimony, their lifestyle required cash resources. So where did this cash come from?

[114] The most significant source they point to is gifts, in particular wedding gifts and a \$1,000 gift from a friend associated with the birth of the Wahabs' first child in 2008. But, other sources were identified by the Wahabs as well.

(a) Wedding Gifts - \$16,000 Cash and Gift Cards

[115] In the net worth analysis, the CRA credited the Wahabs with cash wedding gifts of \$8,287.⁵⁸ Mr. Wahab suggested that amount was received in the form of cheques, and deposited in the bank so that it was easier to establish to CRA's satisfaction. But, he said they received approximately \$16,000 more in cash, none of which was deposited in a bank, and gift cards. The assertion is that these were a non-taxable source available to fund personal expenditures in 2008, 2009 and 2010. However, the testimony about this additional cash was both inconsistent and unconvincing.

⁵⁷ For example, Mr. Wahab claims they purchased a vehicle and the seller would only accept cash.

⁵⁸ The wedding was in 2007 and therefore this amount was part of the base year net worth analysis.

[116] Ms. Yuan testified that when she first spoke with Mr. Wahab she asked about any gifts or other financial support from family and Mr. Wahab replied there was none. However, he later called her and said they received money for birthdays and at their wedding, a maximum of \$16,000. While Mr. Wahab tried to suggest that he told the auditor about that on their first call, the auditor's testimony is consistent with her notes of the calls.⁵⁹

[117] According to Ms. Yuan's notes, Mr. Wahab described monetary wedding gifts of \$16,000, apparently without distinguishing cash from cheques or mentioning gift cards. In the same conversation he apparently referred to cheques received for birthdays. At trial, when complaining about the CRA, he said that he told them wedding gifts were \$16,000 but that the CRA had only accepted \$8,287.⁶⁰ This evidence suggests that the \$16,000 he claims for wedding gifts was inclusive of cheques for which CRA gave them credit.

[118] However, in other contexts throughout the hearing, Mr. Wahab suggested the \$16,000 was in addition to the cheques. He initially said this \$16,000 consisted of cash and gift cards, but then said this amount also included cash received from selling items they had received as wedding gifts.⁶¹

[119] Although he could not recall exactly, Mr. Wahab said he thought the gift cards and gifts-in-kind he converted to cash might have represented a third of the \$16,000 – and that about \$1,000 was in Home Depot gift cards because people knew he was renovating the basement of the Andros Property in order to rent it. If that is true, I infer that any gift cards were fully spent by the end of 2007 because that unit was rented in 2007.⁶²

[120] Mr. Wahab maintains they had both Canadian and US cash, as they had two different wedding receptions, one in the US and one in Canada. He claims the Canadian cash was kept in an envelope at their home and the US funds were left in

⁵⁹ See Exhibit A-5. This is another example of a document where Mr. Wahab tenders a single page from a multipage document (it is marked page 3).

⁶⁰ Transcript, Vol. 4 page 117.

⁶¹ Transcript, Vol. 5, pages 881-882; Transcript, Vol. 6, page 1000.

⁶² In stating this, I recognize Mr. Wahab also claimed to be completing significant renovations to the rental unit in 2008, after it was rented. I did not find his evidence about ongoing renovations at all credible. I also observe a credit card charge at Home Depot in February 2008, suggesting any Home Depot gift cards had been depleted before then.

a suitcase in Mrs. Wahab's parents' home because it would "take too much time to drive to deposit the money in the bank." Yet, they specifically suggested cash and gift cards as wedding gifts to their guests at the US wedding reception, because they are "easier to take across the border".⁶³ And, the Wahabs had more than one US bank account, including one Mrs. Wahab had before she was married, and at least one US dollar bank account in Canada. Mr. Wahab also said cheques in US dollars received as birthday gifts were deposited in the bank; if so, they clearly went to the bank from time to time to make US dollar deposits.

[121] Mr. Wahab said that while the cheques they received at the wedding were deposited in the bank, the cash was not – even though, to accept his testimony, the amount of cash significantly exceeded the cheques. The only explanation he offered for the different treatment was that the Wahabs wanted to keep the cash available to fund cash purchases at garage sales to purchase things to set up their home and to spend at salvage stores. Yet he also testified that he had a lot of furniture and household items before he married that he had been accumulating over the years and storing in his parents' home. He said that Mrs. Wahab had things as well and they had to decide which to keep and which to sell. Both he and Mrs. Wahab mentioned items they received as wedding and shower gifts for their home and gifts of appliances and furniture for their rental units. And, the Wahabs suggested time and time again that items acquired at salvage stores and garage sales cost next to nothing, so very little cash would be needed for that purpose.

[122] On the one hand, Mr. Wahab claims they need very little cash because of their frugal life style – suggesting their personal expenditures were largely made at garage sales and salvage stores- clothing, food, household items, baby items. etc. On the other hand, he claims they kept significant cash outside of a bank account for a period of some three years to have available to purchase items at garage sales and salvage stores. Yet, so much of the evidence about this cash does not make sense.

[123] Both Mr. and Mrs Wahab said they were very anxious to pay off their mortgage. Mr. Wahab said several times they never wanted to owe money to anyone. Yet, they apparently gave no thought to using any of this \$16,000 to pay down the mortgage they had on the first house or to reduce the amount of the mortgage taken when they purchased the Yarrow Property at the end of 2009. When asked, Mr. Wahab's testimony was that they decided that the money they

⁶³ See Exhibit A-45.

earned would be used to pay down the mortgage but the wedding money was separate, to be used for salvage stores and garage sales to set up their home.

[124] Mr. Wahab claims to have records⁶⁴ for garage sale purchases (items and price paid), in amounts as low as \$0.10,⁶⁵ and prices at which he sold items on Kijiji.⁶⁶ And yet, he admitted he had no records regarding the amount of cash and gift cards received at the wedding, and how and when those gift cards and cash were spent. His only explanation was that it was personal so he didn't need records. So why then have records for garage sale purchases and sales of personal items?

[125] Mr. Wahab also said they wanted to keep the wedding money entirely separate from the business. Yet, he also claimed cash from the wedding was used to purchase a vehicle for the business.

[126] He said that in 2010 when they realized they still had significant cash from the wedding in the envelope they decided to use that cash to purchase food at grocery stores. This, he explained, is why the grocery food charges on credit cards fell to less than \$250 in 2010. Again, this doesn't seem to make a lot of sense. Why restrict the use of cash to groceries?

[127] Ms. Yuan explained that her analysis of the bank accounts indicated that cash withdrawals from the banks declined between 2008 (\$6,280), and 2009 (\$4,525) and again in 2010 (\$150). Mr. Wahab had no persuasive explanation for this. Mr. Wahab first claimed this was the case because at the end of 2009 they decided to put as much of their spending on credit cards as possible to get rewards and loyalty points. He later suggested that no cash from their bank accounts over the three-year period was withdrawn to pay for personal expenses.⁶⁷ He claims all

⁶⁴ He did not present these records to Court, but presented what he described of summaries of these items from his personal journals. Even these summaries seem inconsistent with testimony. For example, the suggestion is they went to a garage sale two weeks after the birth of their first child and their purchases in the month following the birth included maternity clothes.

⁶⁵ See Exhibit A-29. Several items on this list are said to have been acquired for no cost.

⁶⁶ See Exhibit R-5.

⁶⁷ He suggested all cash withdrawals were for the rental properties because he said the cash came out of the rental property account.⁶⁷ But, he did not explain why cash would be needed to incur expenses for the rental properties. The only significant example of non-personal expenditures paid in cash was the car. He said he used the Canadian Tire card or cheques for the rental

personal expenditures paid in cash were funded by wedding or other cash gifts and sales of personal items on Kijiji and Craigslist. If rewards and loyalty points are what you want and you had cash in the house, it would be rational to use the credit card to buy groceries and use the cash to pay the credit card bill (or to deposit the cash in the bank to earn interest until needed to pay the credit card bill).

[128] The Wahabs claimed that the items they purchased at garage sales and salvage stores were so inexpensive their cash needs were very modest. While they had many bank accounts, for many purposes, Mr. Wahab claims they kept thousands of dollars in wedding gift cash in envelopes in two locations and depleted it over more than a 3-year period, first at garage sales and salvage stores, and ultimately also at grocery stores, simply because they received those gifts in cash not by cheque. Why would he not have deposited at least some of the cash in the bank along with the cheques to earn interest until they had a need for it? Mr. Wahab said they moved their bank deposits from ING to PC Bank because the latter paid a little bit more interest yet they claim they kept significant cash outside a bank for years. Why would some of that \$16,000 not be used to reduce their mortgage if their cash needs were so small, they wanted to use the wedding cash for their home, and one of their objectives was to repay the mortgage as quickly as possible? And, if they decided to spend the remaining money in 2010, why would they limit the use of that money to purchasing groceries? Why not use it also for any other personal expenditure? Mr. Wahab had no credible answer for these questions.

[129] I accept the Wahabs probably did receive some cash as wedding gifts and that they might have spent some of that cash at salvage stores and garage sales, and perhaps on other things as well. But, I am not satisfied that the Wahabs received cash gifts in an amount anywhere near the amount Mr. Wahab claims, or that cash from a wedding in August 2007 was neither deposited in a bank nor largely spent before sometime in early 2008. To conclude otherwise would be inconsistent with the other testimony regarding financial matters.

(b) Stephen Wood Cheque

[130] Mr. and Mrs. Wahab were married in August 2007 and welcomed their first child in May 2008. Mrs. Wahab had been a resident of Ohio prior to marriage and moved to Canada following the wedding, in late August or early September 2007.

properties. Based on all of his evidence, I cannot accept that significant cash was needed to pay expenses associated with the rental properties.

Mr. Wahab said that Mrs. Wahab applied for Ontario medical (OHIP) coverage immediately upon coming to Canada, in August or September 2007. He described her as being very on top of this.⁶⁸

[131] Mr. Wahab testified that Mrs. Wahab was not covered by OHIP until February 2008, and that they did not learn she was going to be covered until three months later, at the end of May, on the day their first child was born. The OHIP letter they received that day advised OHIP coverage would be retroactive for three months.

[132] Mr. Wahab said that prior to 2008 they wondered if they would have OHIP coverage before the baby was born⁶⁹ and were very concerned about a large hospital bill. Because the midwives were free, they chose to see a midwife and, until they received the OHIP letter, the Wahabs covered all the costs for ultrasounds, tests, etc. Mr. Wahab said it was only in the last month or so of Mrs. Wahab's pregnancy that the midwives advised she needed a physician for the birth, which is why they had the baby in the hospital. Mr. Wahab could not explain why midwives were not covered by OHIP but nonetheless were free.

[133] In contrast, Mrs. Wahab testified that the midwives were covered by OHIP throughout her pregnancy but, because of complications at the end of her pregnancy, she delivered her baby in a hospital with a physician.

[134] Mr. Wahab said that people at their church knew his wife was having a difficult pregnancy and that he was concerned about not having health coverage for her. He claims that around Christmas 2007 they received a \$1,000 cheque from Mr. Wood, sent because Mr. Wood and his wife wanted to help the Wahabs with their medical costs. Although Mr. Wahab said the cheque was received with a card at Christmas, the Wahabs did not deposit this cheque in the bank, but rather held on to it.

[135] While Mr. Wahab explained that once they knew they had OHIP coverage he offered to return the cheque to Mr. Wood, Mr. Wood declined, suggesting the

⁶⁸ This too does not suggest someone with no interest in financial matters.

⁶⁹ I am surprised that the Wahabs did not know whether an immigrant to Ontario, married to a Canadian citizen, and a resident of Ontario, would not be entitled to health coverage after six months of residency in Canada (i.e., as of February 2008) even though Mrs. Wahab applied immediately on coming to Canada.

Wahabs give the money to another good cause. Mr. Wahab said only then, in June 2008, did they deposit the cheque in their bank account.

[136] In support of this testimony, Mr. Wahab submitted a bank statement showing a \$1,000 deposit in June 2008. But, other than Mr. Wahab's testimony, nothing establishes that that deposit is the cheque Mr. Wahab described. It could be that, or it could be something else. There is simply no way of knowing.

[137] Mr. Wood did not testify to corroborate Mr. Wahab's evidence. I give no weight to a November 29, 2018 email from Mr. Wood. It is written nearly 11 years after the purported gift, and on the eve of trial, in response to a request from Mr. Wahab, which request supplies all of the relevant details. Mr. Wood's email does not refer to the amount of any cheque or describe when the cheque was sent or deposited.

[138] Mrs. Wahab did not mention any cheque or gift from Mr. Wood in her testimony.

[139] If midwives were covered by OHIP (or otherwise "free"), then Mr. Wahab's testimony about his concerns about significant medical expenses does not make sense. I suspect that OHIP coverage, some 5 or 6 months after Mrs. Wahab permanently moved to Canada, was not as uncertain as Mr. Wahab claims. Moreover, both he and Mrs. Wahab suggested that, but for complications at the end of her pregnancy, Mrs. Wahab would have delivered the baby with midwives, which they both claimed had no cost, and not in a hospital.⁷⁰ So why would they be concerned about a large hospital bill? And, if they had medical bills to pay before they learned they had OHIP coverage (such as for ultrasounds), why wouldn't they use the gift given to them for that very purpose to pay these costs? Why would they hold on to that cheque for 6 months?

[140] The evidence surrounding this gift is not at all convincing. If a cheque was received at Christmas 2007, I infer it was deposited at that time and not six months later in June 2008. Accordingly, I find no support for an adjustment to the net worth assessment based on any gift from Mr. Wood.

(c) Realtor Rebate

⁷⁰ Mr. Wahab said they learned the pregnancy was high risk in the last month or so and therefore the baby was born in the hospital. This was similar to Ms. Wahab's testimony.

[141] Mr. Wahab contends that he and his wife were given a \$3,000 rebate cheque from their realtor in connection with the purchase of the Yarrow Property in late 2009. His position is that this was a non-taxable source of funds in 2010, when the cheque was received and deposited in their bank account. He suggests that this deposit to the bank account inappropriately inflated their unreported income for 2010.

[142] The documentation regarding this rebate was not particularly compelling. It included some email correspondence with the realtor, a copy of a document signed only by the Wahabs and a copy of a cheque stub.⁷¹ If the cheque was deposited to the bank account, I am satisfied the auditor would have seen it as part of her bank account analysis. In completing her net worth analysis Ms. Yuan may have recorded the cost of the Yarrow Property net of the rebate or otherwise treated the amount as a non-taxable receipt.

[143] Mr. Wahab did not ask the Ms. Yuan about this rebate. Ms. Yuan said that she gave the Wahabs the benefit of the doubt when they asserted they had a non-taxable source of cash. Weighing all of the evidence, I am not satisfied that this amount was not taken into account by CRA in the net worth assessment.

(d) Rental Deposits

[144] The Wahabs rented out parts of the homes they lived in and reported rental income. Mr. Wahab suggested that they received \$2,875⁷² as prepaid rent from three tenants (\$800 in 2008 with respect to the lower unit at the Andros Property and \$2,075 in 2009, a combination of deposits for the upper unit at the Andros Property (\$1,225), when they moved to the Yarrow Property, and the lower unit at the Yarrow Property (\$850)) and that these funds should not have been included in income as part of the net worth assessment. In other words, he argues these are non-taxable sources of cash available to the Wahabs to spend in 2008 and 2009.

⁷¹ See Exhibit A-39. The document has a handwritten note “Agreement Based on \$3000 Cash Back on Sale Purchase Rebate” that appears to be in Mr. Wahab’s handwriting. In any case the document is only signed by the Wahabs, and is dated November 26, 2009. The cheque stub suggests the closing was December 8, 2009, yet Mr. Wahab said the agreement with the realtor regarding the rebate existed from the outset and would have applied regardless of what house they purchased even though he tenders a document dated less than two weeks before the closing. The rental agreement for the lower unit of this property is dated November 18, 2009, apparently before they owned it.

⁷² Initially he claimed \$2,910 was received but reduced the claim to \$2,875.

[145] In support of his claim, Mr. Wahab presented a 2007 rental application for the lower unit at the Andros Property and a tenancy agreement for each of 2009 and 2010 for two different properties.⁷³ The two tenancy agreements refer to the tenant providing a deposit equal to the last month's rent, and while Mr. Wahab did not have a copy of the 2007 tenancy agreement, I accept that it probably would have provided for a deposit equal to one month's rent. Nonetheless, I am not persuaded the rental deposits assist the Appellants.

[146] First, any prepaid rent under the 2007 rental agreement for the lower unit at the Andros Property would have been received in 2007. Those funds would either have been spent in 2007 or included in bank deposits or other assets as at December 31, 2007, the base year for the net worth assessment.⁷⁴

[147] The two tenancy agreements do not support Mr. Wahab's claim the Wahabs received \$2,075 in 2009, since one is dated in October 2010 for a tenancy effective December 1, 2010. I have no evidence regarding the effective date on which the upper level at the Andros Property was rented, or for how much it was rented before December, 2010.⁷⁵

[148] Moreover, prepaid rent must be included in income, subject to the availability of a reserve where the relevant conditions are met. Where a reserve is available and claimed, the effect is that the tax liability on the prepaid rent is deferred until a future year. The reserve provided in paragraph 20(1)(m) of the Act is available only in computing income from a business, not income from a property. It is not clear that the Wahabs would qualify for the reserve for their rental properties. Moreover, the reserve is optional and need not be claimed. Mr. Wahab did not demonstrate that he claimed a reserve.

[149] The Yarrow Property was acquired in December 2009. The 2009 rental agreement for the lower unit there provided for rent of \$850 per month

⁷³ See Exhibit A-24. The 2009 agreement is for the lower unit at the Yarrow Property. The 2010 agreement is for the main and upper level at the Andros Property. It is not clear that the complete tenancy agreements were submitted since the documents suggest there are 3 pages, but only two pages were made available. Moreover, as noted previously, at least one agreement had terms on the back of a page not provided to the Court.

⁷⁴ To the extent the Wahabs rented that property to a new tenant in 2008, that tenant's deposit would in effect simply replace the deposit of the departing 2007 tenant, and not increase net worth.

⁷⁵ Mr. Wahab highlights \$1,225 in the 2010 agreement.

commencing on December 1, 2009.⁷⁶ Mr. Wahab said the lower unit at the Andros Property was rented for \$800 per month pointing to the 2007 rental application.⁷⁷ Gross rental income reported in 2009 was \$11,535, which is very close to the sum of (\$800 x 12 for the Andros Property lower unit) + (\$850 x 2 for the Yarrow Property lower unit), suggesting a reserve was not taken in 2009 and the full amount was reported as income.⁷⁸

[150] In conclusion, I am not persuaded that the rental deposits, if any, have any effect on the net worth analysis.

(e) Sales Tax Transition Payment

[151] Mr. Wahab argued that the CRA had not given them credit for two \$330 payments received in 2010 from the government, known as sales tax transition payments. This, he suggested, was \$660 of non-taxable funding available to them to fund expenses in 2010.

[152] Ms. Yuan said that her bank account analysis revealed that only one cheque for \$330 was deposited (in July 2010). She said that she had given them credit for government cheques of \$1,661 in 2010, and that she believed the \$330 was included in that amount.

[153] I am satisfied that Ms. Yuan likely did give the Wahabs the proper credit for the July payment of \$330, both because she saw the deposit and included it in her bank analysis and because there is no evidence the Wahabs raised this issue on their objection or with CRA Appeals.⁷⁹

⁷⁶ The rebate materials Mr. Wahab supplied suggest the house purchase closed December 8, 2009, which calls into question a rental agreement effective December 1, 2009 and dated November 18, 2009. Mr. Wahab testified they moved in December 2009, but did not specify the date.

⁷⁷ Notwithstanding that he also claimed it was being substantially renovated well into 2008.

⁷⁸ The Wahabs did not say when they started renting the upper level at the Andros Property. The only tenancy agreement they produced is dated October 2010 to be effective December 1, 2010. But, as they moved out of that unit in December 2009 and the rebate materials suggested the closing occurred December 8, 2009, it may not have been rented for December 2009.

⁷⁹ Mr. Wahab made a similar argument in Court regarding GST credit cheques but those were taken into account by CRA Appeals (\$570 in 2008 and \$305 in 2009). See Exhibit A-16.

[154] The second cheque was payable in December 2010 and accordingly may not have been received or deposited until January 2011. While he had a bank statement showing the \$330 deposit on July 2, 2010, Mr. Wahab had no evidence to suggest the December 2010 cheque was deposited in 2010. I draw the inference that the second cheque was not deposited or used until 2011 and so was not a source of non-taxable funds in 2010.

[155] Accordingly, I am not persuaded any adjustment is warranted because of the 2010 sales tax transition benefit.

(f) Sales of Household Goods on Kijiji and Craigslist

[156] Mr. Wahab claimed that each year the Wahabs sold items that were excess to their needs. Again, he provided what he described as a partial list taken from personal journal notes.⁸⁰ He did not supply the original documents. Mr. Wahab's evidence in this regard is essentially that they acquire items at garage sales for pennies or small dollars,⁸¹ but are able to sell things at significantly higher prices.⁸² I don't find this evidence plausible.

X. DECEMBER 31, 2007 BALANCE SHEET UNDERSTATED FAIR MARKET VALUE OF ASSETS

[157] The Wahabs assert that the Minister understated the fair market value of their assets at the end of 2007. As a result, the increase in their net worth between the end of 2007 and the end of 2008 was overstated by that same amount. The two items that they point to are accounts receivable and inventory.

(a) Accounts Receivable

[158] Mr. Wahab provided a summary of Auto Maculate invoices he claims were rendered in 2007, reported as income in 2007, but not paid or deposited in the bank

⁸⁰ He claimed it did not include items he sold on Craigslist or Kijiji because those were not in his personal journal. That was not necessary because Paypal records everything. Yet, he did not bring any relevant Paypal records. The only Paypal records he had related to business purchases or services he said Auto Maculate provided to individual car owners.

⁸¹ See Exhibit A-29. The most expensive item identified is a bed for \$40.

⁸² See Exhibit R-5. The lowest amount received for an item identified as sold is \$25 with prices ranging as high as \$750, and the average being in excess of \$150.

until 2008. The accounts receivable were not recorded as an asset in the balance sheet as at December 31, 2007. He believes that, as a result, the increase in net worth between 2007 and 2008 was overstated by approximately \$15,000 and suggested this difference means his 2008 unreported income should be reduced accordingly.

[159] Mr. Wahab's evidence regarding the \$15,000 was not very convincing. Copies of 45 invoices rendered in 2007 were provided,⁸³ yet his summary of invoices supporting the \$15,000 contains a list of 70 invoices.⁸⁴ Mr. Wahab also brought copies of bank statements and deposit slips which he said demonstrated when various 2007 invoices in the summary were paid. However, as Auto Maculate has standard charges for its services, many invoices are for the same amount.⁸⁵ Therefore, it is difficult to determine with any confidence that a particular deposit represents payment for a particular invoice, particularly as Mr. Wahab suggests a single cheque from a dealership often represented payment for multiple invoices and sometimes represented partial payment of an invoice.

[160] For example, Mr. Wahab suggests that five invoices rendered to a single customer in 2007⁸⁶ were paid by three cheques,⁸⁷ within 3 days of each other in January 2008, and yet deposited by the Wahabs into two different accounts. Mr. Wahab also suggests deposits received as late as April 9, 2008 related to invoices rendered as early as October 11, 2007. He explains this by saying that in 2007 the Wahabs had not yet figured out how and when to invoice and chase payment, accounting for the significant delay between invoicing and payment.

[161] Mr. Wahab stated the invoices were coded to customer⁸⁸ and numbered chronologically. Yet invoice TC004 predates TC001 by nearly 3 weeks, TC002 by 24 days and TC003 by a month further, undermining the credibility of this evidence.

⁸³ See Exhibit A-31.

⁸⁴ The summary is Exhibit A-32. I acknowledge Mr. Wahab said he had not provided all of the invoices, but he said not more than six in the summary were excluded.

⁸⁵ Exhibit A-31 contains several invoices that total to the same amount.

⁸⁶ Identified as invoices H001, H002, H003, H004 and H005 in Exhibit A-31.

⁸⁷ According to Mr. Wahab H001 was one cheque, and H003-5 were combined in a single cheque (both deposited January 17, 2008 at CIBC), while H002 was a single cheque deposited at another financial institution on January 14, 2008.

⁸⁸ For example, NN for NorthEnd Nissan, AC for Autoconnect, and TC for Team Chrysler.

[162] But more fundamentally, even if I accept Mr. Wahab's evidence that his assets at the end of 2007 were understated by accounts receivable of \$15,000, the Wahabs were not credited with any accounts receivable at the end of 2008, 2009 or 2010.⁸⁹ Thus, assets were also understated at the end of every other year as well. For example, some invoices rendered in 2008 presumably were not paid until 2009. Mr. Wahab conceded this, but argued that the accounts receivable at the end of 2008 were lower than at the end of 2007 because by that time they had become better at invoicing and pursuing payment.

[163] Unfortunately, Mr. Wahab provided no evidence of the accounts receivable balances for any year except 2007. The business revenues reported in each of 2008 to 2010 were significantly higher than in 2007. Therefore, even if the percentage of income represented by unpaid invoices at those year ends was lower than at the end of 2007, the value of the year-end receivables may have been comparable, or perhaps more likely higher than at the end of 2007.⁹⁰

[164] The Wahabs have not convinced me that any downward adjustment to assessed income is appropriate on the basis of accounts receivable at the end of 2007. Indeed, the evidence suggests the Wahabs may have benefited from accounts receivable not being recorded as an asset any year.

(b) Inventory

⁸⁹ See Schedule 1 of Exhibit A-16. Although the Auto Maculate business was transferred to Inc. in October 2009, the net worth balance sheet is prepared on a consolidated basis.

⁹⁰Gross business income reported by Mr. Wahab in 2007 was \$33,098. In 2010, Inc. reported sales of \$192,238. While \$15,000 represented almost 50% of 2007 revenues (by itself surprising), that amount would be less than 8% of 2010 revenues. Mr. Wahab's testimony was by the end of 2008 customers were paying 30 to 60 days after invoicing. This suggests invoices rendered in November and December 2010 would not be paid until January or February 2011. Therefore, accounts receivable at the end of 2010 were probably higher than \$15,000 (1/12 of \$192,238 is more than \$16,000, a conservative estimate as Mr. Wahab said in addition to invoices, some dealerships required a monthly summary after month end, and would not pay until 30 or 60 days after receiving that summary). I also observe that Inc.'s accounts receivable at the end of 2009 were reported in the Schedule 100 as \$24,852 (See Exhibit A-6). Again, this is more than Mr. Wahab claims there were at the end of 2007. There is no evidence to suggest they would be less than \$15,000 at the end of 2008 (the year with the highest reported revenues) or 2010.

[165] Mr. Wahab raised a similar issue regarding inventory. He suggested that the inventory balance at the end of 2007 was understated by \$1,635⁹¹ and so their assets were understated. He admitted that in filing his 2007 income tax return, he reported an inventory balance of \$2,000. Not surprisingly, that is the amount the CRA used in determining the value of the Wahabs' assets at the end of 2007. However, at the hearing, Mr. Wahab claims that \$2,000 was an estimate and the actual balance at the end of 2007 should have been \$3,635. Consequently, he argues the net worth change between 2007 and 2008 is overstated by \$1,635.

[166] Mr. Wahab acknowledged that in 2008, 2009 and 2010 no inventory balance was reported at the end of the year. He explained that what he had considered as inventory in 2007, he determined to be more appropriately treated as supplies in subsequent years and so those costs were deducted in the year incurred.⁹²

[167] Mr. Wahab's evidence on the purported additional inventory was not strong. Although he had some invoices for products purchased in 2007 that he claims were not used in 2007, nothing substantiates that and indeed he concedes his claim is inconsistent with the tax return he himself prepared and filed. Those invoices together add up to less than \$3,000. Several bear dates in the early part of 2007. Those dated in November and December 2007, total less than \$1,200, i.e., significantly less than the year-end inventory he reported on the 2007 return. Mr. Wahab's description of how he determined how much inventory to report did not convince me that he could determine years later that what he reported in the 2007 return was incorrect. In my view, his estimate at the end of 2007 or in early 2008 when his return was prepared is more likely accurate than a number he asserts should be accepted years later.⁹³

⁹¹ I observe that in the guide Mr. Wahab provided to assist with his case, he uses \$3,635 as the adjustment but based on his testimony that is a mistake, as it includes the \$2,000 he actually reported at the end of 2007.

⁹² But then at the hearing he suggested they should have been recorded as inventory in 2008, 2009 and 2010. In the context of these appeals, I need not consider whether the costs should be characterized as inventory or expensed as supplies, and frankly do not have sufficient information to do so. However, one way to look at his evidence is that in 2007 Mr. Wahab adopted a hybrid approach – deducting some costs and treating others as inventory, while in 2008, 2009 and 2010 all of these costs were deducted as supplies.

⁹³ While he raised this issue with CRA Appeals, it is not clear he raised it with Ms. Yuan. But in any event, the audit commenced in 2011, some four years after the end of 2007.

[168] Moreover, if he did understate the inventory at the end of 2007, he also would have overstated his income in 2008 having deducted in 2007 (\$1,635) the cost of something that he now claims he should have deducted in 2008 instead. Thus, if Mr. Wahab's testimony is correct, about which I have significant doubts, his assets at the end of 2007 would increase by the same amount that his income in 2008 would decrease, reducing the taxable sources of funding in 2008.

[169] I see no basis upon which to adjust the net worth assessment because of additional inventory Mr. Wahab claims he had at the end of 2007.

XI. MISCELLANEOUS OTHER ITEMS

(a) \$3,410 balance in CIBC Account

[170] Mr. Wahab claims the auditor incorrectly included in their bank balances, as at the end of December 2009, \$3,410 referring to a summary the auditor prepared at the time of the audit.⁹⁴ As a result, he claims the fair market value of their assets was overstated, because that bank balance had been transferred to another account in October 2009. However, that amount was eliminated by CRA Appeals⁹⁵ and so was taken into account before the 2016 reassessments were issued. Accordingly, it does not affect the income tax reassessments under appeal.

(b) 2009 Personal Expenditures

[171] Mr. Wahab spent considerable time explaining why the assumptions made with respect to 2009 personal expenditures were incorrect.

[172] His first issue was with a statement made in a letter to Mr. Wahab responding to his objection to the reassessment.⁹⁶ The confusion arises because CRA Appeals took a somewhat different approach to the net worth assessment than the auditor had. Under the CRA Appeals' approach, certain expenditures the Wahabs made had to be allocated between personal and income-earning purposes (*i.e.*, rental or business income). Examples of these include insurance, food, shelter and transportation costs.

⁹⁴ See Exhibit A-21.

⁹⁵ See Schedule 1 of Exhibit A-16.

⁹⁶ Exhibit A-16.

[173] CRA Appeals agreed to certain adjustments to the personal expenditures for 2009 but then stated:

Following all adjustments allowed in the Personal Expenditures Worksheet 2009, the personal expenses would finally add up to \$13,417. The decrease of \$185,516 included in Personal Expenditures Worksheet 2009 is inappropriate, that amount is bigger than the total of business expenses that are included in the personal expenditures. Therefore, we are going to reduce the adjustment of \$185,516 from \$6,034.⁹⁷

[174] Mr. Wahab argued that the \$185,516 should not be adjusted because the auditor had agreed the business and rental expenditures were that amount.

[175] While the letter from CRA Appeals is not as clear as it might be, I understand the above statements to mean that of the \$185,516 of expenses identified as business/rental on the 2009 income tax return, a portion was not reflected in the personal expenditures worksheet at all, such that it would be inappropriate to adjust personal expenditures for all of the \$185,516 amount.

[176] For example, the rental and business expenditures totalling \$185,516 include wages (approximately \$100,000), advertising (approximately \$4,900) and cost of goods sold (approximately \$35,000), no portion of which would be included in the personal expenditures worksheet as an amount that must be allocated between personal and income-producing expenditures. In contrast, expenses like food, shelter, insurance and transportation costs would have to be divided and partially treated as personal. In fact, based on their analysis, CRA Appeals was of the view that the unreported business income in 2009 should have been increased to \$16,385, but assessed less unreported business income.⁹⁸

[177] Mr. Wahab also alleges that the Minister assumed personal transportation costs that were too high and included insurance expenses related to the Auto Maculate business as personal. In particular, he alleges the \$4,687 of transportation costs CRA Appeals treated as personal includes business insurance

⁹⁷ See Exhibit A-16. I assume “from \$6,034” should be “by \$6,034.”

⁹⁸ See Reply Schedule G. Total unreported business income assessed to Philip Wahab, Stephanie Wahab and Inc. in 2009 was approximately \$13,500.

of \$4,423. In support he points to numbers on his 2009 T2125 (Statement of Business or Professional Activities).⁹⁹

[178] I am not convinced by Mr. Wahab's evidence. The expenses reported on the T2125 are summarized in Schedule A to that form but he did not supply Schedule A or any of the relevant invoices. Moreover, to accept his evidence would mean that personal fuel costs and personal car insurance costs would be reduced to \$264. That amount is clearly too low, particularly given Mr. Wahab's testimony about the number of times he travelled to the U.S.¹⁰⁰ to visit Mrs. Wahab's family in a family (personal) vehicle and the distance travelled to garage sales almost weekly between May and September.

(c) 2009 and 2010 Telephone and Restaurant Expenditures

[179] Similarly, Mr. Wahab said that the CRA should not have categorized certain expenditures as personal. In particular, he alleges that approximately \$525 of the \$678 treated by the CRA in 2010 as personal telephone charges should have been treated as business, not personal. Similarly, for 2009 he claims the personal phone charges should be only \$26.10. He made similar assertions regarding restaurant expenses.

[180] Unfortunately, Mr. Wahab's evidence on this was not compelling. He did not provide any documents other than the auditor's working papers and the CRA Appeals' letter. While he can point to numbers on those documents, they were prepared years apart and it is unclear what changes transpired in the interim. The auditor's working papers identify all phone charges without categorizing them between personal and income earning. The CRA Appeals letter does allocate them. Other than Mr. Wahab saying the number is wrong, there is no corroborating evidence. CRA Appeals may not have agreed that the claimed expenses should be divided as Mr. Wahab claims. Mr. Wahab did not provide the underlying bills or even the excel spreadsheets on which he said they recorded various expenses as business or rental. He did not demonstrate that the relevant expenses were business expenses, but rather just made the statement they were.

⁹⁹ See Exhibit A-35.

¹⁰⁰ The Wahabs described a lot of personal use of vehicles beyond trips to the U.S. (church, garage sales, family get togethers, etc.).

[181] Taking into account all the evidence in this appeal, I am not persuaded any change to the unreported income is warranted for these items.

XII. NORTH AMERICAN FINANCIAL GROUP

[182] Between the February and June 2019 hearing dates, the Wahabs sought to amend their notices of appeal to add a new ground of appeal. This amendment concerned the character of certain payments they received in 2009 and 2010 in connection with arrangements they made with North American Financial Group (“NAFG”). These amounts were reported as interest, but the Wahabs now assert they were not income.

[183] The informal procedure rules do not address amendments to pleadings. The Rules provide that a pleading may be amended at any time on filing the consent of all other parties.¹⁰¹ Counsel for the Respondent consented to the amendment prior to the June 2019 hearing date. Given the Respondent’s consent, I permitted the Appellants to amend their notices of appeal.

[184] Counsel for the Respondent correctly points out that the issue raised by the amendment does not affect the net worth assessment per se, because the Wahabs’ net worth would not change. However, if the character of funds associated with the NAFG arrangement changes from income to capital, Respondent’s counsel acknowledges the effect is a reduction in Mr. and Mrs. Wahab’s income in 2009 and/or 2010.

[185] These appeals were brought under the informal procedure rules which limit the amount that may be subject of the appeal. Under the *Tax Court of Canada Act* (the “TCC Act”), “the aggregate of all amounts” means the total of all amounts assessed other than interest.¹⁰² Therefore, it includes federal taxes¹⁰³ and penalties.¹⁰⁴ However, that limit applies to each assessment under appeal, not the

¹⁰¹ See Rule 54.

¹⁰² Section 2.1 of the TCC Act.

¹⁰³ But not provincial taxes. See *Hassamali Estate v. The Queen* [1998] 2 CTC 3055 (T.C.C.).

¹⁰⁴ *James v. The Queen* [2001] 4 CTC 2919 (T.C.C.).

aggregate amount disputed under a single notice of appeal,¹⁰⁵ which, as in this case, may address more than one assessment.

[186] While it is unclear whether this new issue could result in the amounts in issue in the Wahabs' income tax appeals exceeding the limits for proceeding under the informal procedure rules, we proceeded on the basis that the Wahabs could present evidence on the NAFG arrangements, but any relief under these appeals would be limited to the informal procedure limit.

[187] So what were these arrangements? Mrs. Wahab did not provide any evidence regarding the arrangements with NAFG.¹⁰⁶ Philip Wahab's testimony was far from clear and not entirely consistent with the documents.

[188] Mr. Wahab explained that in 2009 the Wahabs advanced \$200,000 to NAFG with the understanding that they were making two \$100,000 loans. Loan agreements were prepared and signed providing for (i) repayment of the amounts advanced at the end of the term and (ii) monthly interest payments at the rate of 15% of the amounts advanced.

[189] Mr. Wahab explained that he and Mrs. Wahab each separately advanced \$100,000 to NAFG on March 1, 2009. He said Mrs. Wahab's investment was for an 8-month term, whereas his was for a one-year term. The reason for the difference was not explained. Mrs. Wahab was repaid \$100,000 in November 2009 and received monthly payments in 2009 totalling \$10,000.

[190] Mr. Wahab said he received all promised monthly payments on his investment for the initial 12-month term but was not repaid his \$100,000 at the end of that term, in March 2010. Rather, according to Mr. Wahab, the Wahabs decided to reinvest the \$100,000 for a second one-year term commencing March 1, 2010, on essentially the same terms. But, on maturity of Mr. Wahab's 2009 investment, the \$100,000 was reinvested as a joint investment by the Wahabs.

¹⁰⁵ *Pink Elephant Inc. v. The Queen* 2011 TCC 395 (IP); *Wiens v. The Queen* 2011 DTC 1125 (IP); *Maier v. The Queen* 1994 CarswellNat 3242 (IP).

¹⁰⁶ Roy Wahab testified that he also had entered into a similar arrangement with NAFG. However, the consequences to him are not relevant to the Wahabs' appeals. His evidence does nothing more than corroborate that NAFG committed securities fraud and assert that he lost money as a result.

[191] Consistent with that testimony, NAFG issued Ms. Wahab a T5 for 2009 and a T5 for 2010 in the Wahabs' joint names. Mr. Wahab said they have not yet received repayment of the \$100,000 reinvested in 2010 and claims they did not receive all of the monthly payments related to the 2010 contract.

[192] The Wahabs assert that NAFG was running a Ponzi scheme, and that the T5s issued to them were incorrect in treating the monthly amounts as interest on the loans. The Wahabs reported such amounts as interest income but now assert that these amounts were a return of their own money (capital) and accordingly their income in 2009 and 2010 should be reduced. The Respondent takes the position that the amounts are income.

[193] The Ontario Securities Commission found that NAFG had committed securities fraud by misrepresenting its financial position to investors, failing to disclose material facts to investors, and by using "new" investor money to pay "old" investors.¹⁰⁷ An application for judicial review of that decision was made to the Ontario Divisional Court and then the Ontario Court of Appeal, but the result did not change. Leave to appeal to the Supreme Court of Canada was denied. Thus, I accept that NAFG did commit securities fraud.

[194] Mr. Wahab argues that because they (i.e., the family unit) advanced \$200,000 and received back only \$130,000,¹⁰⁸ their income in 2009 and 2010 should be reduced by \$31,250 (i.e., the aggregate monthly payments he says they received and reported as interest income). In other words, because the money they received was their own money, not a return on that money, they should not be taxed on any of the monthly payments.

[195] The documentary evidence is incomplete and not consistent with Mr. Wahab's testimony. Although Mr. Wahab testified there were three different loans, only two loan agreements were put in evidence, one dated March 1, 2009¹⁰⁹ and the other March 1, 2010.¹¹⁰ The agreement Mr. Wahab describes as entered into by Mrs. Wahab alone was not provided to the Court.

¹⁰⁷ See SCJ decision (Ontario Divisional Court) 2018 ONSC 136.

¹⁰⁸ By this I believe he is referring to the \$100,000 Mrs. Wahab received in 2009, the monthly payments they received in 2009 (\$10,000 + \$11,250 totalling \$21,250) and the monthly payments received in 2010 (totalling \$10,000).

¹⁰⁹ See Exhibit R-1.

¹¹⁰ See Exhibit R-2.

[196] Both loan agreements identify Philip and Stephanie Wahab as joint lenders of \$100,000 in 2009 and in 2010. Secondly, the 2009 loan agreement has attached as Schedule A, a Certificate of Accredited Investor, dated March 1, 2008, a full year before the agreement itself was apparently signed, raising concerns about whether this is the correct document or there is another agreement in Mr. Wahab's name only, consistent with his testimony and the 2009 T5s.

[197] The Wahabs provided two T5s for 2009, one in Mr. Wahab's name and the other in Mrs. Wahab's name,¹¹¹ but only one for 2010.¹¹² The 2010 T5, issued in their joint names, reports eight monthly payments of interest.¹¹³ But, Mr. Wahab's testimony (and the 2009 T5 in Mr. Wahab's name) suggests there should be two T5s for 2010 – one in Mr. Wahab's name for the first three months of 2010,¹¹⁴ and a second in their joint names reflecting the joint loan made March 1, 2010.

[198] The testimony and available documents regarding the NAFG arrangements are so inconsistent it is difficult to discern what the facts are. It seems clear there were three separate loans (although who made them is far from clear). Are the T5s correct in identifying the lenders? Are the loan agreements correct in identifying the lenders? Is the 2009 agreement even the right agreement given the schedule is dated 2008 and the lenders are the Wahabs together, while the T5s for 2009 and Mr. Wahab's testimony suggest they made separate loans?

[199] But, the Wahabs concede \$100,000 was repaid in full on or about November 9, 2009 with interest and Mr. Wahab said that was repayment of Mrs. Wahab's investment. If that is true, then she received back both her initial advance and the monthly return on that advance.¹¹⁵ Thus, whether a Ponzi scheme or not, Mrs. Wahab profited from her arrangement with NAFG and I am satisfied

¹¹¹ This is consistent with his testimony but not the loan agreements.

¹¹² See Exhibit A-30.

¹¹³ Monthly interest was \$1,250. The joint loan agreement provided for interest payments to commence in April, 2010.

¹¹⁴ Since only nine monthly payments were received in 2009, the other three on his 2009 investment presumably would have been received in January, February and March 2010.

¹¹⁵ The T5 in Mrs. Wahab's name suggests she received \$10,000 in interest, which is eight payments of \$1,250. Mr. Wahab did not claim otherwise. He provided a bank statement showing a deposit of \$100,000 in November 2009.

the \$10,000 received in 2009 on that advance is income.¹¹⁶ As the Federal Court of Appeal in *Johnson* stated:

A Ponzi scheme may well be a source of income for some participants during some part of its existence.¹¹⁷

[200] Consistent with the second 2009 T5 and his testimony (but not the 2009 loan agreement), if Mr. Wahab made his own separate investment in 2009, he received the monthly payments he contracted for, as well as a repayment in March 2010, of the \$100,000 he advanced in 2009. While the principal of that loan was not returned to Mr. Wahab by being deposited in his account, in my view it was repaid by NAFG, as NAFG was directed by Mr. Wahab to reinvest the amount due to him under the 2009 loan agreement, under a new 2010 loan agreement. That 2010 loan agreement provided for an entirely different arrangement – one under which Mr. and Mrs. Wahab jointly made a loan. Put another way, in March, 2010, a separate investment decision was taken. Accordingly, like Mrs. Wahab, Mr. Wahab profited from the initial investment and, in my view, the amount reported on the 2009 T5 that NAFG issued to him is properly characterized as income in 2009.

[201] If in contrast to Mr. Wahab's testimony, but consistent with the 2009 loan agreement, the 2009 loan was made on a joint basis, my conclusion is the same. Mr. Wahab concedes the monthly contracted payments were made on that loan agreement. That agreement ended in March 2010. He testified that they decided to reinvest for a second term. He did not suggest he was pressured to do so or that in March 2010 NAFG would not have repaid the \$100,000 advanced in 2009, as it had repaid Mrs. Wahab in November 2009, had the Wahabs sought repayment. In other words, there is no suggestion the contractual rights in either 2009 loan agreement were not respected.¹¹⁸

[202] In my view, regardless of who made the second loan in 2009, it was in effect repaid on March 1, 2010, again with interest. Thus, regardless of the arrangements after March 1, 2010, the Wahabs have not convinced me that any change to their 2009 income is warranted in respect of the NAFG arrangements.

¹¹⁶ See *The Queen v. Johnson* 2012 FCA 253 and *Roszko v. The Queen* 2014 TCC 59.

¹¹⁷ *Ibid*, at para. 43.

¹¹⁸ *Ibid*, at para 49.

[203] As to the joint loan made March 1, 2010, I accept that NAFG may not have fulfilled the terms of that agreement. I also acknowledge that in *Roszko*¹¹⁹ this Court decided no income was earned in the case of the fraud established in that case (admittedly similar to the arrangements involving NAFG) because Mr. Roszko was the victim of a fraud from the outset and the arrangement did not constitute a source of income.

[204] I confess in this case I prefer the reasoning in the *Johnson* case. However, even if I were to apply the *Roszko* reasoning to the Wahabs' 2010 investment, the Wahabs could not state with any certainty how the amount recorded on the joint T5 for 2010 was reported for tax purposes or how much of that T5 related to the 2009 advance and how much related to the 2010 advance.¹²⁰ Mr. Wahab was not certain how the amounts would have been reported either stating only they would have followed the T5s.

[205] Mr. and Mrs. Wahab bore the burden of establishing on a balance of probabilities that the amounts reported as income received from NAFG were not income and who reported the relevant amounts as income. They have not met that burden. Having raised this issue in amended notices of appeal, filed several months after the hearing of the appeals commenced, the Wahabs should have been prepared to lead convincing (or at least complete, consistent and coherent) evidence on this issue. They failed to do so. They have not satisfied me what the facts are, or that they know the critical facts. Because they did not establish, on a balance of probabilities, that the Minister's reassessments are incorrect in respect of these amounts, their income in 2009 and 2010 cannot be reduced on account of their arrangements with NAFG.

[206] It is possible that one or both of the Wahabs incurred a capital loss on the loan made to NAFG in 2010, but I make no finding in that regard. The evidence is far from clear and any such loss is not relevant to these appeals.

XIII. CONCLUSION ON NET WORTH ASSESSMENTS

[207] The Minister is not bound by income tax returns filed by taxpayers and is permitted to determine income and calculate tax payable based on a net worth

¹¹⁹ *Ibid.*

¹²⁰ Mr. Wahab suggested the 2010 T5 included 3 months of the interest on the 2009 advance, which I have decided is income.

audit, as the Minister has done in these appeals. The Federal Court of Appeal has said that the Minister may make an arbitrary assessment of income using any method that is appropriate in the circumstances.¹²¹

[208] A net worth assessment is premised on the assumption that increases in wealth over time can be imputed as income for that period of time, unless the taxpayer demonstrates the accretion in wealth is attributable to something else. This places a significant burden on the taxpayers:

Its [the net worth assessment method] purpose is to relieve the Minister of his ordinary burden of proving a taxable source of income. The Minister is only required to show that the taxpayer's net worth has increased between two points in time. In other words, a net worth assessment is not concerned with identifying the source or nature of the taxpayer's appreciation in wealth. Once an increase is demonstrated, the onus lays entirely within the taxpayer to separate his or her taxable income from gains resulting from non-taxable sources.¹²²

[Emphasis added.]

[209] Here the Wahabs largely do not dispute the increase in wealth assumed by the Minister. While the Wahabs disputed the value of two categories of assets at the end of 2007, I have not been persuaded they make any difference for reasons explained above.

[210] A net worth assessment presents challenges to taxpayers in part because:

[t]he net worth method of estimating income is an unsatisfactory and imprecise way of determining a taxpayer's income for the year. It is a blunt instrument of which the Minister must avail himself as a last resort. . . . Such assessments may be inaccurate within a range of indeterminate magnitude but unless they are shown to be wrong they stand. It is almost impossible to challenge such assessments piecemeal. The only truly effective way of disputing them is by means of a complete reconstruction of a taxpayer's income for a year. A taxpayer whose business records and method of reporting income are in such a state of disarray that a net worth assessment is required is frequently the author of his or her own misfortunes.¹²³

[Emphasis added.]

¹²¹ *Hsu v. R* 2001 FCA 240.

¹²² *Ibid.*, at para 29.

¹²³ *Ramey v. The Queen* 1993 CarswellNat 979 (TCC), at para 6.

[211] The Canadian income tax system is a self-reporting and self-assessing one. The taxpayer is the best person to know the relevant facts that establish his or her income:

A taxpayer cannot simply argue that the Minister's assumptions are wrong, he must demonstrate that by providing supporting documentation. In the absence of such documentation the only issue before the Court is whether the Minister's assessment "was reasonable and logical in the circumstances . . .": *Hsu v. Canada, supra*, at paragraph 33.¹²⁴

[212] In this case, with few exceptions the taxpayers did not provide any evidence of their business records. Instead, they relied on income tax returns filed, working papers from the auditors, summaries of original documents, select documents from their files and oral testimony. That evidence was far from persuasive and was insufficient to establish that the reassessments were incorrect.

[213] Based on all of the evidence, I am satisfied that the Minister accepted many of the Wahabs' assertions regarding personal expenditures and sources of funds. If anything, in my view, the evidence suggests that the Minister may have had grounds to assess greater amounts of unreported income than the Minister did. Nothing suggests to me that the Minister's reassessments were anything but reasonable and logical in the circumstances.

XIV. INC'S UNREPORTED INCOME INCREASES THE WAHABS' INCOMES IN 2009 AND 2010

[214] Philip and Stephanie Wahab are each 50% shareholders of Inc. The Minister assumed that Inc.'s unreported income was used to fund personal expenditures made by the Wahabs, so the Wahabs appropriated the resulting funds. The Wahabs did not suggest that Inc.'s unreported income was earned by them rather than Inc., or that any of Inc.'s unreported income was retained by Inc. or used to pay Inc.'s expenses other than those deducted in computing Inc.'s income.¹²⁵ As a result, I accept that the Wahabs appropriated Inc.'s unreported income for their personal purposes and the Minister was correct in including 50% of Inc.'s unreported

¹²⁴ *Kim v. The Queen* 2016 TCC 150 (TCC), at para 31.

¹²⁵ Although there are statements in the Notice of Appeal concerning this unreported income remaining with Inc., the Appellants did not raise this at the hearing. Their entire premise was there was no unreported income.

income in 2009 and 2010 in the incomes of Philip Wahab and Stephanie Wahab in 2009 and 2010.

XV. NORMAL REASSESSMENT PERIOD

[215] Mr. Wahab's 2008 taxation year was assessed by notice dated July 23, 2009. The Minister reassessed that taxation year by notice dated March 18, 2013, more than 3 years after the initial notice of assessment.

[216] Except in limited circumstances, the Act precludes the Minister from reassessing Mr. Wahab's 2008 taxation year more than three years after the original assessment was issued for that year (the "normal reassessment period"). Following Mr. Wahab's objection to the 2013 reassessment, the Minister issued a second reassessment for 2008 dated December 23, 2016. This 2016 reassessment is the subject of Mr. Wahab's appeal.

[217] The normal reassessment period does not apply to the 2016 reassessment because it was issued following Mr. Wahab's objection to the 2013 reassessment. Nonetheless, if a reassessment issued beyond the normal reassessment period is not valid, a second reassessment issued after a notice of objection to that first invalid reassessment is similarly not valid. Thus, if the 2013 reassessment is invalid, the 2016 reassessment will be invalid.

[218] In this case, the Minister alleges that, in filing his income tax return for the 2008 taxation year, Mr. Wahab made a misrepresentation attributable to neglect, carelessness or wilful default, so that the reassessment is valid notwithstanding that it was issued beyond the normal reassessment period.

[219] The Respondent bears the onus of establishing that the Minister was entitled to reassess the 2008 taxation year after the normal reassessment period. If the Minister establishes that the reassessment beyond the normal reassessment period is justified, Mr. Wahab bears the onus of establishing that the facts and assumptions underlying that reassessment are incorrect.

[220] A net worth assessment is by its very nature imprecise. It involves deducting the taxpayer's net worth at the beginning of a year from the taxpayer's net worth at the end of the year, and adding to that difference the taxpayer's expenditures in the year. The amount determined from that exercise is assumed to be income unless

the taxpayer is able to establish the contrary. As noted above, such assessments may not be accurate but unless they are shown to be wrong they must stand.¹²⁶

[221] So how does the Respondent discharge the burden of establishing a misrepresentation where the reassessment is based on a net worth assessment? The Federal Court of Appeal provided the answer to this question in *Lacroix v. The Queen*:¹²⁷

What, then, of the burden of proof on the Minister? How does he discharge this burden? There may be circumstances where the Minister would be able to show direct evidence of the taxpayer's state of mind at the time the tax return was filed. However, in the vast majority of cases, the Minister will be limited to undermining the taxpayer's credibility by either adducing evidence or cross-examining the taxpayer. Insofar as the Tax Court of Canada is satisfied that the taxpayer earned unreported income and did not provide a credible explanation for the discrepancy between his or her reported income and his or her net worth, the Minister has discharged the burden of proof on him within the meaning of subparagraph 152(4)(a)(i) and subsection 162(3).¹²⁸

[Emphasis added.]

[222] A similar conclusion was reached in *Molenaar v. The Queen*,¹²⁹ the following passage from that case was quoted by the Federal Court of Appeal in *Lacroix*:

Once the Minister establishes on the basis of reliable information that there is a discrepancy, and a substantial one in the case at bar, between a taxpayer's assets and his expenses, and that discrepancy continues to be unexplained and inexplicable, the Minister has discharged its burden of proof. It is then for the taxpayer to identify the source of his income and show that it is not taxable.¹³⁰

[223] So what is the evidence in this case? The Appellants in this case chose to attack the reassessments by challenging them piecemeal, but were unsuccessful.

¹²⁶ See *Ramey v. The Queen* 1993 CarswellNat 979 (TCC).

¹²⁷ 2008 FCA 241.

¹²⁸ *Ibid.*, at para 32.

¹²⁹ 2004 FCA 349.

¹³⁰ *Ibid.*, at para 4.

Importantly, Mr. Wahab did not dispute the net value of the family assets at the end of 2007 or 2008 with two exceptions, which I have rejected:

1. Inventory: Mr. Wahab states the inventory at the end of 2007 was understated by approximately \$1,600. I do not accept this evidence; and
2. Receivables: Mr. Wahab asserts that invoices rendered for services in 2007 were not shown as accounts receivable at the end of 2007, but the same would be true at the end of 2010. So while his assets may have been understated at the end of 2007, they were understated at the end of 2010 as well.

[224] Thus, I must consider what would account for a difference in net worth of more than \$207,000 over the course of 2008, beyond the income reported by Mr. and Mrs. Wahab for 2008 and the other amounts accepted by CRA. While the Wahabs pointed to a number of items, in my view their explanations were not plausible. On the other hand, I am satisfied that Ms. Yuan and CRA Appeals gave the Appellants the benefit of the doubt in many respects.

[225] In my view, the evidence presented is far more consistent with the Wahabs and Inc. having unreported income than anything else. And, in my view, it is the only explanation for the increase in net worth that can be drawn from the evidence. Therefore, the Minister is entitled to reassess Mr. Wahab's 2008 taxation year beyond the normal reassessment period.

XVI. PENALTIES UNDER SUBSECTION 163(2) AND SECTION 285

[226] A taxpayer who knowingly, or under circumstances amounting to gross negligence, has made or participated in, or assented to or acquiesced in the making of, a false statement or omission in a tax return filed in respect of a taxation year is liable to a penalty, typically referred to as a gross negligence penalty. The Respondent bears the burden of establishing the facts justifying the assessment of the penalty.

[227] While assessment beyond the normal reassessment period applies only to Mr. Wahab's 2008 taxation year, penalties have been imposed on all of the Appellants under both the Act and the ETA, for all of the taxation years and reporting periods under appeal.

[228] Taxpayer actions or inactions that justify reassessing a statute-barred year do not necessarily justify the imposition of a penalty. While there are some similarities between the prerequisites to reassessment beyond the normal reassessment period and the prerequisites to the imposition of gross negligence penalties, the latter is a more difficult test to satisfy. It requires the Respondent to establish that the Wahabs knowingly made a false statement in their returns (and in the Inc. returns) or did so in circumstances amounting to gross negligence. Gross negligence requires a higher degree of neglect than a mere failure to take reasonable care. It is marked as a significant departure from what would be expected. It is more than carelessness or a misstatement.¹³¹ The same standard applies to the penalties under section 285 of the ETA.

[229] In a net worth assessment case, if I am satisfied that the Appellants earned unreported income and did not provide a credible explanation for the discrepancy, the Minister has discharged the onus for penalties.¹³²

[230] For the reasons outlined above, I have not accepted the Appellants' explanation for the discrepancy between the change in net worth and reported income in any of the years under appeal. I have not been persuaded that the net worth assessments are incorrect. As I noted above, in my view they are reasonable and logical.

[231] In some cases this Court has determined that a taxpayer who has not rebutted the Minister's assumptions regarding unreported income, but had a credible explanation for the difference, was not liable for penalties, even if the taxpayer was not able to establish that explanation to the Court's satisfaction.¹³³ The Court appears to have determined that the explanation was plausible, even if not proven on a balance of probabilities, such that while the reassessment itself could be upheld, the penalties could. This is not such a case.

[232] While the Wahabs provided several explanations for the significant increase in net worth, those explanations were simply not credible. This leads me to conclude that the only explanation is unreported business income.

¹³¹ See *Wynter v. Canada*, 2017 FCA 195 and *Zsoldos v. Canada*, 2004 FCA 338.

¹³² *La Croix*, *supra*, note 53.

¹³³ See *Goren v. The Queen* 2017 TCC 85.

[233] Liability for penalties must be considered separately for each of the Appellants. Given my conclusion that each of the Appellants had unreported income, it is clear that all of the relevant returns contained false statements or omissions.

[234] As to whether those omissions were made knowingly or in circumstances that amount to gross negligence, I must conclude they were. The Wahabs have not offered any plausible explanation for the failure to report income. They have not suggested that the failure was accidental or attributable to a misunderstanding about the taxable nature of amounts received. Their position is that there was no unreported income, but I am satisfied that the evidence is otherwise. In fact, it seems unlikely that the Wahabs could have accumulated the assets they have admittedly accumulated over the relevant taxation years based on the income and other sources of cash they claim to have.

[235] Both of the Wahabs are educated. Mr. Wahab has post-secondary education and a CMA designation. Stephanie Wahab completed high school. The Wahabs have rental properties, and a business. Mr. Wahab described various excel worksheets and records they maintained. Moreover, through the course of the appeal, it was quite clear that Mr. Wahab in particular was quite adept at numbers.

[236] The Wahabs repeatedly spoke about their lack of knowledge regarding accounting and tax matters. Mrs. Wahab in particular indicated that she had absolutely no affinity for numbers and that she relied entirely on Mr. Wahab for all financial matters and to prepare the income tax returns.

[237] One cannot avoid a penalty simply by abdicating responsibility for preparation of the income tax return to another person. Mrs. Wahab said she never reviewed the income tax returns and she was not particularly interested in understanding them. Mrs. Wahab and Mr. Wahab operated Auto Maculate together. Mrs. Wahab was involved in invoicing and pursuing payment for services. If she was unaware of the existence of unreported income, in my view, it can only be attributable to wilful blindness.

[238] Similarly, Mr. Wahab prepared and filed Inc.'s income tax returns in the relevant taxation years and reporting periods.

[239] I am satisfied that the Wahabs and Inc. had unreported business income, that the unreported income was used to fund personal expenditures or savings, and that

the failure to report such income was done either knowingly or as a result of gross negligence.

[240] In the absence of a credible explanation for the unreported income, in my view, the Respondent has established, through the Appellants' evidence, that they made false statements or omissions in their returns knowingly or in circumstances amounting to gross negligence. Thus, the Wahabs and Inc. are liable for the penalties assessed under subsection 163(2) the Act.

[241] Because the standard for penalties under the ETA is the same, Mr. Wahab and Inc. are liable for the penalties assessed under section 286 of the ETA, subject only to such penalties being adjusted to take into account the Respondent's concession on the reassessments under the ETA.

XVII. COSTS

[242] At the end of the appeals, Respondent's counsel stated that the Respondent would be seeking costs. However, it was agreed that submissions on costs would be deferred until the decision in these appeals was delivered.

[243] In the context of informal procedure cases, the Court may award costs to the Respondent only if the actions of the Appellant unduly delayed the prompt and effective resolution of the appeal. In this case, the appeals were heard over seven days, an unusual length of time for an informal procedure case. However, I observe that the appeals involved three taxpayers, three taxation years, and both income tax and GST/HST appeals.

[244] Moreover, errors on the part of the Respondent also led to delay. Most notably, the failure of the Respondent to issue reassessments for GST/HST to conform to the income tax reassessments following the Wahabs' objections to earlier reassessments. Another example is an item initially identified as an error in Schedule E to the Reply regarding personal expenditures in 2009, but subsequently explained not to be an error. A taxation year was also improperly identified in the Reply. These errors caused some confusion and added to the delay.

[245] On the other hand, the Appellants made a very late amendment to their appeals, did tend to revisit issues and facts on subsequent hearing days, and were permitted significant leeway in presenting their case.

[246] The Respondent shall have 30 days from the date hereof to make submissions on costs if the Respondent wishes to pursue costs. The Respondent shall send a copy of those submissions to the Appellants immediately after they are filed with the Court. The Appellants shall have 30 days thereafter to make submissions on costs if they wish to do so. If the Respondent chooses not make submissions, no costs shall be awarded and each party shall bear their own costs.

XVIII. CONCLUSION

[247] By order of this Court made under subsection 171(2) of the Act, certain other issues raised by Mr. Wahab's income tax appeal for the 2009 taxation year have been held in abeyance because Mr. Wahab has agreed, pursuant to Rule 146.1, to be bound by the result in lead cases.

[248] Accordingly, Mr. Wahab's income tax appeal for his 2009 taxation year is disposed of in accordance with these reasons only insofar as that appeal relates to NAFG arrangements, the unreported business income and penalties in respect thereof. His appeal of the reassessment of his 2008 and 2010 taxation years is dismissed.

[249] Stephanie Wahab's appeal of the reassessment of her 2009 and 2010 taxation years is dismissed.

[250] Inc.'s appeal of its 2009 and 2010 taxation years is dismissed.

[251] As a consequence of the Respondent's concession, the GST/HST appeal of Mr. Wahab for the 2008 reporting period and of Inc. for its 2010 reporting period are allowed and referred back to the Minister for reassessment on the basis that the unreported sales for GST/HST purposes should be reduced to match the unreported business income under their income tax assessments for the 2008 and 2010 taxation years, respectively.

[252] Mr. Wahab's and Inc.'s appeals of the GST/HST reassessment of their 2009 reporting periods are dismissed.

Signed at Ottawa, Canada, this 18th day of September 2020.

“K.A. Siobhan Monaghan”

Monaghan J.

CITATION: 2020 TCC 105

COURT FILE NOS.: 2017-1005(IT)I
2017-2850(IT)I
2017-4985(GST)I

2017-1330(IT)I
2017-4959(GST)I

2017-1331(IT)I

STYLES OF CAUSE: AUTO MACULATE INC. v. HER
MAJESTY THE QUEEN

PHILIP WAHAB. v. HER MAJESTY THE
QUEEN

STEPHANIE WAHAB v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATES OF HEARING: December 4, 2018; February 11, 2019; June
12 and 13, 2019; and September 18, 19
and 20, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice K.A. Siobhan
Monaghan

DATE OF JUDGMENT: September 18, 2020

APPEARANCES:

| | |
|-------------------------------------------------------------------------|-----------------------|
| Agent for the Appellants, Auto Maculate Inc. and Stephanie Wahab: | Philip Wahab |
| For the Appellant Philip Wahab: | The Appellant himself |

Counsel for the Respondent: Kevin Hong

COUNSEL OF RECORD:

For the Appellant:

Name: Not applicable

Firm: Not applicable.

For the Respondent:

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