Dockets: 2018-2670(IT)I
2020-1129(GST)I

BETWEEN:

PANSY HALLS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence on November 10, 2021, at Toronto, Ontario

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Cathy Lin Lesley L'Heureux

AMENDED JUDGMENT

The appeals from the reassessments in accordance with the attached Reasons for Judgment:

a. In relation to the *Income Tax Act* appeal, file No. 2018-2670(IT)I, the appeal is dismissed without costs.

b. In relation to the *Excise Tax Act* appeal, file No. 2020-1129(GST)I, in accordance with the concessions made by the Respondent, the appeal is allowed in part and the matter is referred back to the Minister for reconsideration and reassessment on the basis that

  (i) all penalties imposed pursuant to s. 285 *ETA* for the taxation years 2011, 2012 and 2013 are vacated;

ii) the GST/HST collectible on the unreported income for the period ending December 31st, 2012 is lowered from $5,014.55 to $2,904.29;

iii) the Appellant is entitled to no other relief.

“This Amended Judgment is issued in substitution of the Judgment dated February 9, 2022.”

Signed at Kingston, Ontario, Canada, this 9th day of February 2022.

Signed at Kingston, Ontario, Canada, this 4th day of April 2022.

“Rommel G. Masse”

Masse D.J.

Citation: 2022 TCC 14
Date: 20220117
20220404
Dockets: 2018-2670(IT)I
2020-1129(GST)I

BETWEEN:

PANSY HALLS,

Appellant,

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AMENDED REASONS FOR JUDGMENT

Masse D.J.

[1] In file No. 2018-2670(IT)I (the "*ITA* appeal") the Appellant contests reassessed unreported income under the *Income Tax Act*, R. S. C. 1985, c. 1 (5th Supp), as amended (the "*ITA*") for the taxation years 2008, 2011, 2012, 2013 and 2014 by way of Notices of Reassessment dated March 26, 2018.

[2] In file No. 2020-1129(GST)I, (the "*ETA* appeal") she appeals the related reassessments dated August 2, 2018 for unremitted goods and service tax ("GST/HST") under the *Excise Tax Act*, R. S. C. 1985, c. E-15, as amended (the "*ETA*") for the reporting periods of October 1, 2011 to December 31, 2011; October 10, 2012 to December 31, 2012 and October 10, 2013 to December 31, 20 13.

[3] Since both of these appeals have significant factual, legal and temporal connections, they were heard together on common evidence.

I. Preliminary Matter

[4] As a preliminary matter, the Respondent seeks leave of the Court to file an Amended Reply to the *ITA* appeal. In view of the issue raised, I grant leave to the

Respondent to file the Amended Reply and it is received and filed as of the date of this hearing.

[5] The Amended Reply raises an important issue. The Respondent submits that this Court has no jurisdiction to entertain the Appellant's *ITA* appeal respecting her 2011 and 2012 taxation reassessments, both dated March 26, 2018, on the grounds that these were "nil" assessments.

[6] The Respondent relies on the Affidavit of Ratmono Thejo sworn Nov. 9th 2021, which is before the Court as Exhibit R-1. Mr. Thejo is a litigation officer for the Canada Revenue Agency (the "CRA") in Toronto. He deposes that he has conducted a search of all of the records of the CRA regarding this matter and that for both the 2011 and 2012 taxation years, the Minister reassessed the Appellant by Notice dated March 26, 2018 and the Minister assessed "NIL" federal taxes payable for those years. Furthermore, there are no interest charges or penalties assessed for those years. The Minister has not further reassessed the Appellant in respect of those taxation years. The Appellant has not filed a Notice of Loss Determination pursuant to s. 152(1.1) of the *ITA* in relation to the non-capital losses for those years. Although the Notices of Reassessment make reference to unpaid balances, these amounts are from other taxation years and do not arise as a result of these reassessments.

[7] Subsection 171(1) of the *ITA* provides:

> 171 (1) The Tax Court of Canada may dispose of an appeal by
>
> a. Dismissing it; or
>
> b. Allowing it and
>
> i. Vacating the assessment,
>
> ii. Varying the assessment, or
>
> iii. Referring the assessment back to the Minister for reconsideration and reassessment.

[8] In *Interior Savings Credit Union v. R.*, [2007] 4 C.T.C. 55 (Fed. C.A.), Justice Noel of the Federal Court of Appeal held at para. 15:

> 15. … The Minister's power and duty under subsection 152(1) of the Act is to "… assess the tax for the year, the interest and penalties, if any, …". The taxpayer's right to object (ss. 165(1)) and to appeal to the Tax Court of Canada (ss. 169(1))

> can only be exercised in order "… to have the assessment vacated or varied …". It follows that unless the taxpayer challenges the taxes, interest or penalties assessed for the year, there is nothing to appeal and indeed no relief which the Tax Court can provide. …

[9] In the case at hand, there are no taxes assessed against the Appellant nor is there any interest or penalties assessed in regard to the 2011 and 2012 taxation years. Therefore, there is nothing to appeal and no relief that this Court can provide. Accordingly, this Court has no jurisdiction to entertain an appeal regarding the 2011 and 2012 taxation years. The Appellant's appeals with respect to her 2011 and 2012 taxation years are quashed.

II. Concessions by the Respondent

[10] The Respondent concedes that there ought not to be any gross negligence penalties pursuant to s. 285 of the *ETA* for the reporting periods ending December 31st, 2011, 2012 and 2013. Therefore, all penalties imposed under the *ETA* are to be vacated.

[11] Furthermore, the Respondent concedes that the GST/HST collectible on the unreported income for the period ending December 31st, 2012 is lowered from $5,014.55 to $2,904.29;

III. Factual Context

[12] The Appellant, Pansy Halls, testified. She impressed me as being an honest and hardworking person. She and her present common law partner, Bill Liske, have been together since 2007. Bill Liske had experience as a chef or cook in the past so they thought they would open up a restaurant. They knew that this was a high risk venture and that it takes about five years to make any profit in this business, so they negotiated an operating line of credit in her name. They purchased a property in November 2009 and spent a considerable amount of time and money on renovations.

[13] The restaurant, located in Wiarton, Ontario, opened on March 10, 2010 under the name of "Roadster's Smoking Gun Barbecue" ("Roadster's"). The Appellant and Bill Liske were 50/50 partners.

[14] All of their time was devoted to the restaurant. She testified that any money they had went into the business. Business did not go well. By 2014, they could not sustain the business any longer. She testified that it got to the point where they were paying their line of credit using personal credit cards. They had to switch money

around from account to account in an effort to stay on top of things. They decided to shut down the restaurant before they lost it. It ceased operations on August 31st, 2014.

[15] Their tax preparer and bookkeeper was an individual named Mary Pretswell from Liberty Tax. She prepared the returns for the tax years here under consideration. She did not testify. It seems to me that she would have been an important witness at the hearing of these appeals. No reason has been offered as to why she did not testify. I infer that her testimony would not have been favourable to the Appellant. The Appellant's tax returns are before the Court as Exhibit A-2. She stands by the information provided therein.

IV. The *Income Tax Act* Appeal

[16] In computing income for the 2008, 2012, 2013 and 2014 taxation years, the Appellant reported her income (loss) as follows:

Table # 1

Description	2008	2011	2012	2013	2014
Gross Business Income	$250,375	$379,319	$290,728	$198,316	$106,109
Net Business Income (loss)	$34.927	($76,793)	($61,956)	(28,125)	($20,155)
Total Income	$40,391	($71,087)	($26,227)	$20,324	$56,810

[17] In summary, the Appellant consistently reported net business losses while the restaurant was in operation. This resulted in reported income (loss) from all sources of ($71,087) for 2011; ($26, 227) for 2012 and $20,324 for 2013 on her *ITA* tax returns.

[18] The Minister initially assessed the Appellant for the relevant taxation years as filed by Notices dated April 30, 2009, May 25, 2012, April 3, 2013, April 7, 2014 and March 26, 2015.

[19] At the request of the Appellant the Minister reassessed the 2008 taxation year to apply non-capital loss carry back of $15,173 from the 2010 taxation year and also to apply non-capital loss carry back of $7,008 from the 2011 taxation year by Notices dated May 19, 2011 and June 4, 2012 respectively.

[20] Sometime later, the Appellant's returns were selected for review by the Audit Division. It was decided to resort to a net worth assessment because restaurants tend to be cash based, the restaurant consistently reported business losses, business and accounting records kept for the restaurant were inadequate and business records and personal finance records were not segregated. The Appellant's reported income was quite simply insufficient to support her and her husband's lifestyles, as Spartan as that lifestyle was.

[21] A net worth audit was performed by Duwayne Renouf of the CRA. As a result of this net worth assessment, the Minister reassessed the relevant taxation years by way of Notices of Reassessment dated February 5, 2016 so as to:

a. Disallow non-capital loss carry back of $3,432 from 2011 to 2008;
b. Include unreported income of $67,510, $51,206, $23,226 for 2011, 2012 and 2013;
c. Disallow non-capital losses of $34,536 for 2014; and,
d. Levy gross negligence penalties pursuant to s. 163(2) of the ITA for 2011, 2012 and 2013.

[22] The Appellant objected to the reassessments by Notice dated March 2016.

[23] The Minister confirmed the reassessment for 2008 by way of Notice dated January 31, 2018, as no loss was available to carry back. The Minister further reassessed the Appellant by Notice dated March 26, 2018 so as to:

a. Reduce unreported income for 2011 by $7,000 down to $60,510; reduce unreported income for 2012 by $25,961 down to $25,245; and, reduce unreported income for 2013 by $8.938 down to $14,288 respectively;
b. Allow carry forward of non-capital loss of $7,982 from 2011 and 2012 to 2014; and
c. Delete gross negligence penalties for 2011, 2012 and 2013;

V. <u>The *Excise Tax Act* Appeal</u>

[24] As a result of the net worth assessment, additional revenue was identified. This could only have come from undeclared sales of Roadster's for which no GST/HST was charged or remitted. That triggered a consequential reassessment to be issued for GST/HST on the unreported amount of sales. The Minister issued a reassessment by way of Notice of Reassessment dated August 2, 2018 for the

reporting periods here under consideration pursuant to subsection 298(4) of the *ETA* resulting in a net tax adjustment totalling $7,181.41. This is summarized in the following table:

Table # 2

Period Ending	Increase in Sales	Increase in GST/HST	Net Tax Adjustments
Dec. 31, 2011	$14,767.26	$1,919.74	$1,919.74
Dec. 31, 2012	$38,573.45	$5,914.55	$5,014.55
Dec. 31, 2013	$1,900.89	$247.12	$247.12
Totals	$55,241.60	$7,181.41	$7,181.41

[25] Gross negligence penalties were also assessed per s. 285 of the *ETA*.

[26] A Notice of Objection was filed on December 28, 2018 but the Minister confirmed the reassessment by Notice of Confirmation dated January 31, 2020.

VI. <u>The Net Worth Analysis Summarized and Explained</u>

[27] The results of the audit and net worth assessment together with schedules and working papers are included in the Respondent’s Book of Documents (Exhibit R-3). The final results, after all adjustments, are summarized in the following table:

Table # 3

Income Tax Discrepancy	December 31, 2010	December 31, 2011	December 31, 2012	December 31, 2013
Assets	$616,116	$618,584	$539,349	$502,411
Liabilities	$475,342	$503,869	$519,082	$519,286
Net Worth	$140,774	$114,715	$20,267	($16,875)
Change in Net Worth	N/A	($26,059)	($94,448)	($37,142)
Add Personal Expenditures		$25,913	$23,708	$24,164
Adjustments		($638)	($56,755)	$72,540

Income Per Adjusted Net Worth		($26,697)	($37,694)	$35,398
Reported Total Income (Loss)		($147,717)	($88,183)	$6,822
Discrepancy (Underreported Business Income per Net Worth)		$121,021	$50,490	$28,576
Appellant's Share - 50%		$60,510	$25,245	$14,288

[28] Therefore, according to this net worth assessment, the Appellant underreported her income by $60,510, $25,245 and $14,288 in 2011, 2012 and 2013 respectively. She was reassessed accordingly

[29] Mr. Justin Lai is a Chartered Professional Accountant. He has worked as an appeals officer with the CRA for about 7 years. He is responsible for examining and reviewing objections filed by taxpayers. His objective is to provide an impartial process to resolve issues raised by taxpayers in a Notice of Objection. He testified that he reviewed the Notice of Objection filed by the Appellant herein as well as the working papers of the audit.

[30] He described the purpose and methodology of a net worth assessment. A net worth assessment is basically a factual assessment. The auditor obtains all possible information and documentation either directly from the taxpayer or from other sources such as the credit bureau, bank statements, statements for lines of credit, credit card statements, and any other available and pertinent documentation. The auditor will ask the taxpayer about any assets they have such as vehicles that were not otherwise captured. Resort is had to the Land Registry Office to find out about real estate and mortgages. The auditor relies on the taxpayer and sources connected to the taxpayer to provide pertinent information. Where there are no source documents, resort is sometimes had to information provided by Stats Can. Every thing that goes into or out of a bank account is reflected in changes to net worth. Adjustments have to be made for non-taxable gifts, lottery winnings, and other non-taxable sources of funds. These non-taxable funds are determined but are not

included in income. Internal transfers between bank accounts are accounted for but they result in no change to net worth. All of the information is compiled and inputted into spread sheets or working papers. A comparison is then made with the assets and liabilities of the taxpayer to see if there is any change to net worth for the period of time under consideration. Then the final number is compared to line 150 being the total reported income on a taxpayer's tax return. A proposal letter is then sent to the taxpayer in order to provide the taxpayer with an opportunity to explain any discrepancies, provide any additional information or clear up any errors or misinformation.

[31] This particular audit was done because the reported income of the Appellant and her lifestyle did not match. There was no segregation between personal and business accounts making it difficult to ascertain what was personal expenses and what was business expenses. This was a cash business and the business did not have complete books and records so a net worth audit was used rather than other methods of auditing. Because these are factual audits, they tend to be very conservative because the audit may not catch a cash transaction. If the business has some revenue that goes into the bank, then the net worth audit will catch it. If a cash transaction is not deposited into the bank, then the net worth audit will not catch it. That is why the audit is very conservative.

[32] Mr. Lai testified that he did not see any major errors in the way the net worth assessment was done. He then discussed certain issues raised by the Appellant at the objection stage. A sum of $45,714 was excluded from income since these were funds that belonged to her son by her first husband. The Appellant felt that RRSP withdrawals were double counted but Mr. Lai in reviewing the working papers and schedules determined that they were not. He explained that some $6,025.16 deposited in the business account was a transfer of funds and so this was removed from consideration as income. He explained that various proposed personal expenses were in fact business expenses and so the required adjustment had been made (such changes being shown in W.P. # 1001 Final Changes, found at Tab 17, Ex. R-3). The business percentage allocated to internet and telephone/television expenses was increased to 75%. The business percentage allocated to motor vehicle expenses was settled at 50% even though there was no supporting documentation such as travel logs. Interest and bank charges were not adjusted since the CRA maintained that they were unsupported as business expenses. Revised non-capital loss carry forward took into account the allowed loss in 2011 that was already applied to a prior year. However, over-applied losses would result in an increase to taxable income in 2008 of $3,432.

[33] Mr. Lai points out that the audit shows that during the audit period, the Appellant's net assets decreased by $37,142. On the face of it, this represents a deterioration in lifestyle. But, how does it compare and relate to reported income (loss)? In order to compare the income reported on the Appellant's tax returns to her decrease in net worth, it is necessary to add non tax-deductible expenses incurred and deduct non-taxable sources of income received. Income tax refunds are deducted as these are not taxable sources of income. Withholding tax on RRSPs cashed in is added as these are not deductible for tax purposes. The largest addition is on account of personal expenditures. A taxpayer is not permitted to deduct personal expenses in the calculation of total income for tax purposes. Accordingly, it is necessary to determine and add back all personal expenses incurred in each year. These personal expenses were analysed, detailed and reproduced in Working Paper # 1001 (see Tab 17, Exhibit R-3) The CRA determined that her total personal expenditures were $39,912 in 2011, $75,630 in 2012, and $42,039 in 2013. These amounts, when added to other adjustments, show that her discrepancy in net worth is understated by $135,020 in 2011, $102,412 in 2012, and $46,451 in 2013. The audit was unable to determine the source of these discrepancies and all non-taxable sources had been identified, therefore these figures represented unreported business income. The CRA proposed to increase the appellant's taxable income by her 50% share of these figures. (these figures have since been adjusted downwards resulting in the figures for undeclared income shown in Table No. 3).

[34] In his opinion, the conclusions drawn in the audit were quite conservative. He made contact with the Appellant to discuss the matter and to try and help her understand everything. This involved 5 or 6 conferences with the Appellant. After these discussions, he made certain adjustments that were to the benefit of the Appellant. In relation to interest and bank charges, these were allowed as business expenses on a 50/50 basis since there was no segregation between personal expenditures and business expenditures and there was inadequate documentation. Some additional business expenditures were allowed on the basis of verbal evidence provided by the Appellant even though there was no supporting documentation. He waived gross negligence penalties under the *ITA* and he provided some interest relief to the Appellant on arrears. A settlement proposal was made but the Appellant rejected it.

VII. <u>Position of the Parties</u>

[35] The Appellant admits that the restaurant was her sole source of income while it was operating and that she had no other sources. However, she claims that she correctly reported all of her taxable income and that there was no unreported income

during the relevant taxation years. She is of the view that a net worth assessment was not necessary. The Minister should just have relied on the information originally supplied by her in her returns and information subsequently provided. She asserts that the net worth assessment is simply wrong. She also claims that the burden of proof is on the Minister to show that she is wrong. Therefore, both appeals should be allowed.

[36] The Respondent stands by the net worth assessment as adjusted. The Respondent asserts that a net worth assessment was necessary in the circumstances and that the Appellant has failed to successfully challenge the underpinnings and conclusions drawn by the net worth assessment and the appeals in both the *ITA* and the *ETA* files ought to be dismissed subject to the concessions made at the beginning of the hearing.

VIII. Issues

[37] In my view, the following issues present themselves for resolution by the Court:

1. Was the Minister justified in assessing the Appellant's relevant taxation years beyond the normal reassessment period pursuant to subparagraph 152(4)(a)(i) of the *ITA* and subsection 298(4) of the *ETA*?
2, Was the Minister justified in using the net worth assessment method as an alternative method of assessment?
3. Did the Minister properly include the amounts of $60,510, $25,245 and $14,288 respectively in the Appellant's income for the 2011, 2012 and 2013 taxation years respectively?
4. Did the Minister properly apply non-capital losses of $7,982 to the 2014 taxation year from the 2011 and 2012 taxation years and did the Appellant have non-capital losses of $3,432 available to apply to her 2008 taxation year from the 2011 taxation year?
5. Is the Appellant liable for additional net tax pursuant to the *ETA* in the amount of $7,428.53 for the Reporting Periods at issue?

[38] In my view, the proper resolution of issues 3), 4) and 5) is completely dependent on whether or not the Court accepts the validity of the net worth assessment.

IX. Analysis

1) The Stature Barred Years

[39] In order to provide some level of certainty and finality to taxpayers, there are time limits applicable to the Minister's ability to reassess taxpayers for previous years. The normal assessment period is three (3) years under the *ITA* (s. 152(3.1)(b)), and four (4) years under the *ETA* (s. 298(1)). Therefore, in the instant case, 2008 and 2011 are statute barred under the *ITA* and the reporting periods ending December 31st, 2011 and December 31st, 2012 are statute barred under the *ETA*.

[40] However, the Minister can assess a taxpayer in respect of a matter at any time pursuant to s. 152(4)(a)(i) *ITA* and s. 298(4)(a) *ETA*, if it is shown by the Minister that there was a misrepresentation that is attributable to neglect, carelessness or wilful conduct on the part of the taxpayer. The onus of proving that there was a misrepresentation and that the misrepresentation was attributable to neglect, carelessness or wilful conduct is on the Minister, even in the case of a net worth assessment and even when the Minister is unable to identify the true source of a taxpayer's income: see *Bouroumand v. R.*, 2015TCC 239 per Lamarre, A.C.J. at paras. 65 to 69.

[41] How does the minister discharge the burden of proof? In *Lacroix v. R.*, 2008 FCA 241, Nadon, J., observed at para. 32:

> [32] … 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) …

[42] In the case at bar, I am of the view that there was a misrepresentation regarding the Appellant's reported income and the business sales of Roadster's. The audit and net worth assessment that were conducted were thorough, meticulous and all-encompassing. All relevant information from a variety of sources was considered. In this case, there was a material discrepancy between reported income and income assessed. The Appellant reported business losses of $71,081 in 2011 and $26, 227 in 2012 and reported income of $20,324 in 2013. The audit and net worth assessment show unreported income of $60,150 for 2011, $25,245 for 2012 and $14,288 in 2013. These are significant discrepancies. Personal and business income are linked since Roadster's was the Appellant's sole source of income. Any unreported income amounts to taxable sales under the *ETA*. The Appellant was not able to provide a

credible and plausible explanation for any of the discrepancies between reported income and unreported income determined by the net worth assessment. I accept that the net worth assessment is more reliable than the reported income of the Appellant and therefore the Minister has shown that there was a misrepresentation.

[43] Is this misrepresentation attributable to neglect, carelessness or wilful default on the part of the Appellant? All taxpayers are obliged to keep records and books of account as will enable the taxes payable under the *ITA* to be determined (see s. 230(1) *ITA*) and that will enable the determination of the taxpayer's liabilities and obligations under the *ETA* (see s. 286(1) *ETA*). In the case at bar, the Appellant's record keeping was inadequate to serve its intended purpose. She did not segregate her personal expenses from the business expenses. It has been held that a failure to keep adequate business records will constitute negligence: see *Lacroix*, *supra,* at para. 13. In my view, it is negligence for a taxpayer not to keep adequate records, especially when there is a statutory duty to do so. This neglect resulted in a misrepresentation of the Appellant's income and she could not establish what her true income or expenses were. Therefore, I am of the view that the Minister has discharged its onus of showing that the Appellant made a misrepresentation due to carelessness or neglect and therefore, the Minister has established that the reassessment of the statute barred years was justified.

2) Net Worth Assessment

[44] The Appellant is of the view that her original tax returns are correct and there was no need for the Minister to resort to the extraordinary method of a net worth assessment in determining her income. She contends that the conclusions arrived at by the net worth assessment cannot be correct and the Minister should have just relied upon the information provided by her. The Appellant also contends that it is up to the Minister to prove that she has done something wrong and not for her to show that she has not.

Was a net worth assessment appropriate?

[45] In deciding whether this was an appropriate case for a net worth assessment, one must start with subsection 152(4) *ITA* (298(4) *ETA*) which provide that the Minister may make an assessment or reassessment at any time. Subsection 152(7) *ITA* (299(1) *ETA*) provide that the Minister is not bound by the information supplied by the taxpayer. This must be read in conjunction with subsection 152(8) *ITA* (299(4) *ETA*) which provide a presumption of validity of an assessment or reassessment.

[46] The net worth method of assessment can only provide an estimate of income. It is typically used where the taxpayer has kept no records or inadequate records or when the taxpayer has failed to file any returns. The nature of a net worth assessment, and its methodology was explained by Bowman, J., in the case of *Bigayan v. R.*, [2000] 1 C.T.C. 2229:

> 2. The net worth method, as observed in Ramsay v. R. (1993), 93 D.T.C. 791 (T.C.C.), is a last resort to be used when all else fails. Frequently, it is used when a taxpayer has failed to file income tax returns or has kept no records. It is a blunt instrument, accurate within a range of indeterminate magnitude. It is based on an assumption that if one subtracts a taxpayer's net worth at the beginning of a year from that at the end, adds the taxpayer's expenditures in the year, deletes non-taxable receipts and accretions to value of existing assets, the net result, less any amount declared by the taxpayer, must be attributable to unreported income earned in the year, unless the taxpayer can demonstrate otherwise. It is at best an unsatisfactory method, arbitrary and inaccurate but sometimes it is the only means of approximating the income of a taxpayer.

[47] Bocock J., reiterated this theme in *Truong v. R.*, 2017 TCC 22,

> 46. Alternative assessments whether by deposit analysis, net worth assessments or other means are not scientific experiments and, as such, are inherently inaccurate. **They are necessitated where a taxpayer has failed to file income tax returns, filed patently deficient ones and/or fails to provide books and records which substantiate requests to file or substantiate filed returns**. …

[Emphasis added]

[48] In *Tam v. R.*, 2010 TCC 157, Boyle, J., of this Court stated at para. 21 that net worth assessments are resorted to when a taxpayer has not kept adequate books and records to verify the amount of income and expenses reported.

[49] Justice Nadon of the Federal Court of Appeal in *Lacroix c. R.*, 2008 FCA 241 (Fed. C.A.), observed at paragraph 18:

> 18. … Our tax collection system is based on the taxpayer's self reporting of the income he or she has earned during a taxation year. Should the Minister doubt, for whatever reason, the accuracy of the taxpayer's return, the Minister may conduct an investigation in such manner as deemed necessary. The Minister may then make a reassessment. If the taxpayer appeals the reassessment, the Minister does not have to prove the facts giving rise to the reassessment. In the reply to the notice of appeal, the Minister need only set out the presumptions of fact used in the reassessment. The onus is on the taxpayer, who knows everything there is to know about his or

> her own affairs, to "demolish" the Ministers, assumptions; otherwise, they are presumed to be true.

And at para. 24:

> 24. This reasoning in no way places an unfair burden on the taxpayer. The taxpayer is aware of the facts and has the means to prove them. It would be most unrealistic to have the Minister bear the onus of uncovering a source of income whose existence can be detected only indirectly, that is, using the net worth method.

[50] On the basis of all of the evidence that I have heard and read, I come to the conclusion that the net worth method of assessment was an appropriate method to be used in this case. The Appellant did not keep adequate or complete records as required by s. 230(1) *ITA* and s. 286(1) *ETA*. The Appellant did not segregate her personal finances from the business finances. Restaurants are very often cash based businesses. The restaurant had reportedly suffered losses each year it operated and only a low income in 2013. The Appellant's only other source of income was from drawing down her RSPs, non registered accounts and her CPP. These amounts were not enough to cover the losses recorded. The state of the Appellant's records was such that it was practically impossible to accurately determine her tax liabilities under either the *ITA* or the *ETA*. She has not produced to this Court any records whatsoever that would establish the contrary.

Burden of Proof

[51] Contrary to the assertion of the Appellant, the burden is on her to prove that the reassessment is incorrect, not for the Minister to show that she has done anything wrong. This principal has been established in the above-noted cases and also by Judge Lamarre in *Dowling v. R.*, 96 D.T.C. 1250 (T.C.C.) as follows at p. 1251:

> The Appellant has the burden of showing that the basis of the Minister's assessment is wrong or that there are errors in certain items of the assessments […] Therefore, when a taxpayer is faced with a reassessment based on a net worth calculation, he can either try to present evidence enabling the Court to determine his real net income or he can seek to prove that the net worth assessment is wrong.

[52] Justice Hamlyn was of the same view in *Mathur v. R.*, [2001] 4 C.T.C. 2779, at para. 18. See also *Tam v. R.*, 2010 TCC 157, where Justice Boyle of this Court stated:

> 3. It is trite that in tax litigation the general rule is that a taxpayer has the onus of proof to satisfy the Court with credible evidence on a balance of probabilities

> standard that the appealed assessments are incorrect. Unless the taxpayer makes out a coherent, credible, *prima facie* case, it is not required that the Crown satisfy the Court the assessments are correct.

[53] In addition, according to s. 152(8) *ITA* and s. 299(4) *ETA*, an assessment is deemed to be valid and binding. It is for the Appellant to show that the net worth assessment is wrong and not for the Minister to show that it is correct.

Challenging the net worth assessment

[54] There are basically three ways to challenge a net worth assessment. As explained by my colleague Justice Bocock in *Truong*, *supra*:

> 36. The Minister has the right to alternatively assess a taxpayer under subsection 152(7) of the ITA and similar provisions under subsection 299(1) of the ETA. Where such an assessment is raised a challenge to the assessment may be mounted by the taxpayer in three ways:
>
> (i) challenge its necessity or method chosen in the first instance;
>
> (ii) challenge specific aspects of the quantum, methodology or inclusions, and/or
>
> submit evidence concerning non-taxable sources of income received by the taxpayer.

[55] He went on to observe at para. 48 that

> […] Vague assertions, inconsistent challenges of actual evidence from interested and related parties and no documentary evidence cannot defeat the cogent third party documentation, disinterested testimony and logical conclusions embedded within the Minister's alternative assessment, based upon third party records and buttressed by clear testimony at trial. …

[56] In the instant case, the Appellant has not been able to mount a successful challenge to the necessity of resorting to a net worth assessment. The state of her personal and business records were such that a net worth assessment was necessary.

[57] Nor has the Appellant successfully mounted any kind of a credible challenge to the methodology used. Mr. Lai has carefully explained the process and the sources of information used. All of the working papers and schedules that were produced

and relied upon are included in Exhibit R-3. In reviewing these documents, I can find nothing wrong with how the audit was done or the conclusions drawn therefrom.

[58] The Appellant has not successfully challenged the net worth assessment on specific issues rather than on a general basis. Any specific issues raised by her at the objection stage have all been satisfactorily dealt with. The Appeals officer made adjustments based on additional information received at the objection stage and allowed most of the expenses, even when based on her verbal representations without supporting documentary evidence.

[59] The Appellant has not identified any significant sources of non-taxable income that was wrongfully included in the net worth assessment.

[60] In summary, the Appellant simply dismissed the net worth assessment as being wrong. However, the net worth assessment was done based on banking records provided by her and her banking institutions. She has not provided to the Court any documentation to support any deficiencies in the net worth assessment. She only produced those documents already reviewed by the auditor and reconsidered by the appeals officer. Her records were inadequate to support the assertion that she properly reported her income and she adduced no reliable evidence to demolish the Minister's assumptions.

[61] It has often been stated that the taxpayer, not the government, is in the best position to prove their taxable income since they are the ones who run their own business and they are the ones who are the guardians of their personal and business records. Where the taxpayer keeps inadequate records, the Minister may resort to alternative methods of assessment such as net worth. Such a method may not be entirely satisfactory but it does provide a reliable estimate. As observed by Justice Desjardins of the Federal Court of Appeal observed in *Hsu v. R.*, [2001] 4 C.T.C. 1 (Fed. C.A.):

> 31. By its very nature, a net worth assessment is an arbitrary and imprecise approximation of a taxpayer's income. Any perceived unfairness relating to this type of assessment is resolved by recognizing that the taxpayer is in the best position to know his or her own taxable income. Where the factual basis of the Minister's estimation is inaccurate, it should be a simple matter for the taxpayer to correct the Minister's error to the satisfaction of the Court.

[62] In the instant case, the Minister's assessment is presumed to be valid and binding. If the Minister's estimation of income and taxes owing is inaccurate, the Appellant must so prove and she is in the best position to do so. She has failed to do

so. She has not produced any testimonial or documentary evidence to demonstrate that the Minister's assumptions and conclusions are wrong.

Conclusions

[63] Based upon the evidence provided and on the results of the net worth assessment, which I accept, this Court is satisfied that:

a. the Minister was justified in assessing the Appellant beyond the normal reassessment period pursuant to subparagraph 152(4)(a)(i) *ITA* and subsection 298(4) *ETA*;
b. the Minister was justified in using the net worth assessment method as an alternative method of assessment;
c. the Minister did properly include the amounts of $60,510, $25,245 and $14,288 respectively in the Appellant's income for the 2011, 2012 and 2013 taxation years respectively;
d. the Minister did properly carry forward and apply non-capital losses of $7,984 to the 2014 taxation year from the 2011 and 2012 taxation years;
e. based upon the net worth assessment, the appellant did not have non-capital losses of $3,432 available to apply to her 2008 taxation year from the 2011 taxation year;
f. the Appellant is liable for additional net tax pursuant to the *ETA* as assessed subject to concessions made by the Respondent at the beginning of the hearing.

Disposition

[64] For all of the foregoing reasons, this Court holds as follows:

a. In relation to the *Income Tax Act* appeal, file No. 2018-2670(IT)I, the appeal is dismissed without costs.
b. In relation to the *Excise Tax Act* appeal, file No. 2020-1129(GST)I, in accordance with the concessions made by the Respondent, the appeal is allowed in part and the matter is referred back to the Minister for reconsideration and reassessment on the basis that
    (i) all penalties imposed pursuant to s. 285 *ETA* for the taxation years 2011, 2012 and 2013 are vacated;
    ii) the GST/HST collectible on the unreported income for the period ending December 31st, 2012 is lowered from $5,014.55 to $2,904.29;
    iii) the Appellant is entitled to no other relief.

"These Amended Reasons for Judgment are issued in substitution of the Reasons for Judgment dated February 9, 2022 in order to correct the words and figures underscored in paragraphs [11], [64]b(i) and [64]b(ii) hereof."

Signed at Kingston, Ontario, Canada, this 9th day of February 2022.

Signed at Kingston, Ontario, Canada, this 4th day of April 2022.

"Rommel G. Masse"

Masse D.J.

CITATION:	2022 TCC 14
COURT FILE NO.:	2018-2670(IT)I 2020-1129(GST)I
STYLE OF CAUSE:	PANSY HALLS AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 10, 2021
REASONS FOR JUDGMENT BY:	The Honourable Rommel G. Masse, Deputy Judge
DATE OF JUDGMENT:	February 9th, 2022 April 4th, 2022

APPEARANCES:

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