

BETWEEN:

LI HUA LIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 27, 28 and 29, 2019 and May 27, 2019 at  
Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Appellant:                      The Appellant himself  
Counsel for the Respondent:        Darren Prevost

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**JUDGMENT**

WHEREAS the Court has on this date published its Reasons for Judgment attached.

NOW THEREFORE THIS COURT ORDERS THAT:

1. The Appeal from reassessments made under the *Income Tax Act* concerning the 2009 and 2010 taxation years is dismissed;
2. Costs in accordance with the applicable Tariff are preliminarily awarded to the Respondent subject to the right of either party to make written submissions thereon within 30 days of the date of the judgment, whereupon the Court shall consider such submissions and may vary its provisional cost award, failing which this provisional cost award shall become final.

Signed at Ottawa, Ontario, this 12<sup>th</sup> day of February 2020.

“R.S. Boccock”

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Boccock J.

BETWEEN:

WEI CHEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 27, 28 and 29, 2019 and May 27, 2019 at  
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Before: The Honourable Mr. Justice Randall S. Boccock

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Signed at Ottawa, Ontario, this 12<sup>th</sup> day of February 2020.

“R.S. Boccock”

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Boccock J.

Docket: 2014-4486(IT)G

BETWEEN:

1773548 ONTARIO INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on March 27, 28 and 29, 2019 and May 27, 2019 at  
Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Appellant: Wei Chen  
Counsel for the Respondent: Darren Prevost

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**JUDGMENT**

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Signed at Ottawa, Ontario, this 12<sup>th</sup> day of February 2020.

“R.S. Boccock”

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Boccock J.

Docket: 2014-4488(IT)G

BETWEEN:

1647208 ONTARIO INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on March 27, 28 and 29, 2019 and May 27, 2019 at  
Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Appellant: Wei Chen  
Counsel for the Respondent: Darren Prevost

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**JUDGMENT**

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Signed at Ottawa, Ontario, this 12<sup>th</sup> day of February 2020.

“R.S. Boccock”

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Boccock J.



Citation: 2020TCC26  
Date: 20200212  
Docket: 2014-4729(IT)G

BETWEEN:

LI HUA LIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2014-4442(IT)G

AND BETWEEN:

WEI CHEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2014-4486(IT)G

AND BETWEEN:

1773548 ONTARIO INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2014-4488(IT)G

AND BETWEEN:

1647208 ONTARIO INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

## **COMMON REASONS FOR JUDGMENT**

Bocock J.

### **I. INTRODUCTION**

#### *a) Reassessments*

[1] These appeals concern two Asian food restaurants, one in Hamilton and the other in Kitchener, Ontario. The corporate Appellant which operated Hamilton “Sushi Star” was 1647208 Ontario Inc. (“Hamilton Co.”). The corporate Appellant which operated the Kitchener restaurant, “Sushi Stars”, was 1773548 Ontario Inc. (“Kitchener Co.”).

[2] The two other Appellants, Li Hua Lin (“Mr. Lin”) and Wei Chen (“Mr. Chen”) each own one-half the issued shares in Hamilton Co. Mr. Chen owns one-half of the shares in Kitchener Co. Mr. Lin owns no shares in Kitchener Co.

[3] The main issues in Hamilton Co.’s and Kitchener Co.’s appeals concern reassessments asserting:

- (i) unreported sales of Hamilton Co. for the 2009 and 2010 taxation years and Kitchener Co. for the 2010 and 2011 taxation years;
- (ii) shareholder benefits allocated to Mr. Lin and/or Mr. Chen arising from the alleged under or unreported sales; and,
- (iii) corresponding subsection 163(2) penalties against the two corporate Appellants and against Mr. Chen and Mr. Lin (the “Penalties”).

[4] The secondary issues in the corporations’ appeals concern:

- (i) in regards to Hamilton Co.:
  - 1. disallowances of certain rent expenses (“Hamilton Rent Expenses”);
  - 2. the disallowance of certain expenses for the purchase of goods and supplies (“Cost of Goods”); and,

3. the disallowance of a deduction of a bonus paid to a worker (“Bonus”).

(ii) in regards to Kitchener Co.:

1. the disallowance of certain claimed rental expenses (“Kitchener Rent Expenses”); and,
2. assessment of subsection 163(2) penalties relevant to the rental expenses (“Rent Penalties”).

[5] There were two other reassessment issues concerning Mr. Chen:

- (i) an automobile benefit under paragraphs 6(1)(e) and (k) of the *Act* (“Auto Benefits”); and
- (ii) the benefit included in income arising from the payment by Kitchener Co. of his rent for a personal residence (the “Rent Benefit”).

[6] The remaining final issue concerned Mr. Lin alone. It was the assessment of a capital gain concerning the disposition of his shares in 2158249 Ontario Inc. (the “Capital Gain”).

b) *Self-Represented Appellants*

[7] Mr. Chen and Mr. Lin represented themselves, respectively. Mr. Chen, with previous leave of the Court, was agent for both Hamilton Co. and Kitchener Co. Both testified through an interpreter. The pleadings for all Appellants were in a deficient state only a month before trial. At a trial management conference, the Appellants received leave of the Court to amend the notices of appeal. Even then, deadlines were missed and the amended notices of appeal accomplished very little. Still further amendments were allowed, subject to the Respondent’s right to seek leave to bring further evidence in reply at a later date.

[8] At trial, the Appellants simply failed to adduce any evidence concerning certain issues clearly identified in the reassessments and in the replies. The Appellants had been given detailed and multiple opportunities to identify the issues, afforded through instructive pre-trial orders, trial management conference calls and consent to amend pleadings then long since closed. Ultimately, such time and indulgences were fruitless. The Appellants in these general procedure appeals

were lost and unfocused. Ultimately, the Court cannot preside over the appeal, collaterally act as counsel to self-represented litigants and maintain a semblance of balance and impartiality. Therefore, the Court extended as much leniency as possible to the Appellants, but ultimately enforced the necessary rules of evidence and order of proceedings to conduct and conclude General Procedure appeals.

[9] Simply put, the Appellants chose to represent themselves and the corporations. This did not assist them. They resisted the suggestion of the Court some 6 weeks before trial, in a trial management session, that counsel, even on a limited basis, be retained. In the final analysis, their failure to do so, hindered their comprehension of the proceedings in Court and of the relevant issues.

[10] In the final analysis, the Court was required in the interests of justice, probity and all parties' rights to conduct 4 days of hearing. It did so. These reasons reflect that process and results. The evidence itemized below was gleaned from the witnesses testifying at trial. Where relevant, the witness who was the source of such testimony is referenced. In recognition of the Appellants self-represented status, as can be seen below, the Court has spent more time and effort than normal in describing the detail methodology used and the data collected and analyzed by the Canada Revenue Agency ("CRA") in these arbitrary assessment appeals.

## II. FACTS

### a) *POS System*

[11] The restaurants operated by Hamilton Co. and Kitchener Co. recorded sales electronically using a point of sale system and software ("POS"). The POS tracks and records sales and other various data using a SimPOS relational database. The cash registers were closed at the end of each day and daily registry tapes were generated.

[12] With the exception of the kitchen staff, all staff members had access to the POS system and could operate the POS machines, enter orders, and print bills.

[13] With respect to Hamilton Co., the POS system was not used to generate the orders for the kitchen. Rather, all orders given to the kitchen were written by hand. No similar evidence was given with respect to Kitchener Co.

### b) *Renovations and ATMs*

[14] Throughout the first half of 2011, Hamilton Co. underwent substantial renovations to update and upgrade the restaurant. The restaurant absorbed adjacent space and doubled in size and in seating capacity. All Appellant witnesses testified that prior to the renovations, business for Hamilton Co. was poor and that the location needed to be renovated to stay competitive. Post renovations, Mr. Chen stated that gross income increased and in the short term nearly doubled, increasing from \$40,000 to approximately \$70,000. In 2012, however, business slowed down again.

[15] When Hamilton Co. re-opened after the several months of renovations, the Appellants stated they had greatly increased advertising and promoted the re-opening with “Groupons”. Under this scheme, customers could gain a 50% discount off the price of the meal. It was asserted that prices of the dishes at Hamilton Co. were increased by 10%.

[16] Kitchener Co. did not undergo any renovations in the years at issue.

[17] In 2011, an ATM machine was installed in both the Hamilton Co. and the Kitchener Co. Prior to 2011, neither location had an ATM.

c) *The Audit Process Generally*

[18] Hamilton Co. and Kitchener Co. were audited by the CRA. The audits began with the “Initial Contact Phase” where two CRA auditors and a computer audit specialist (“CAS”) made unannounced visits to both locations. During this initial visit, the auditors informed Mr. Chen and Mr. Lin of the audit and then interviewed them. The CAS retrieved a then current copy of the POS data. The auditors also reviewed the books and records of the respective restaurants and received corporate bank statements from the shareholders.

[19] The CRA analyzed the POS data to assist the audit process. CRA quickly narrowed the focus of the audit and assessed the quality of the information received. Logically, if an analysis revealed gaps in the invoice numbers during the CRA analysis phase, this may suggest that the data provided to the auditors was incomplete.

[20] After the initial analysis phase, the CRA auditors returned to both locations for the “observation phase”. During this phase, the CRA auditors physically observe on-site the location and business for 7 full consecutive days. The auditors made certain observations and collected “order chits” or sales slips prepared by the

wait staff. Following this 7 day period, the auditors returned once a week for the several following weeks and collected additional data. After this 8 week observation phase, CRA retrieved a second set of POS data covering the observation phase.

d) *The Hamilton Co. Audit Specifically*

[21] The CRA auditors assigned to Hamilton Co. remained on the file throughout the entire audit. The CAS arrived at the restaurant before opening for the Initial Contact Phase in the fall of 2011. The CRA auditors were on site in early January of 2012.

[22] One auditor testified that she received the electronic ledger, printed copies of the POS monthly sales report, and bank statements from the shareholders.

[23] The CAS retrieved the POS data from each of the 4 POS terminals at Hamilton Co. There were no POS data for the 2009 year and there were only limited POS data for the 2010 year. The CAS made a secondary copy of POS data for the purposes of testing and analysing the data. The original copy was preserved as an unadulterated control copy of the data. It was never touched.

[24] The CAS analyzed the POS data using an analytical software program capable of summarizing information and detecting gaps. The CAS analyses were performed in the following weeks and highlighted the finding of inconsistencies and problems, the results of which were presented the report to the auditors.

(i) *Hamilton Co. POS Findings*

[25] The CAS performed two main analyses: a voided sales analysis, and a Detail Order -- Gaps in Row Numbers analysis.

[26] The voided sales analysis summarized the voided records from the POS data and compared the void amounts to the POS reported sales. The analysis revealed that there was substantial amount and number of voided transactions. Between June 2011 and March 2012, the number of voided bills per month ranged from 27 to 724 transactions.

[27] The amounts and number of voided transactions were “extremely high” for a restaurant. A possible explanation for this high number could arise from efforts to suppress sales by voiding an imputed order and retaining the payment. The CAS

testified that the POS data indicated that most voids were approved by a staff member utilizing the name “Wilson”, the English translation of Mr. Lin’s given name.

[28] Audits frequently cause taxpayers to change behaviour. It was observed there was a decline in the number of voided transactions after the observation phase commenced. Gaps in Row Numbers analysis tested the completeness of the POS data by indicating whether a bill is missing any “rows” or line details in the data base. This analysis demonstrated that from June to October 2011, a range of 1174 to 3586 gaps in the rows existed. However, in October 2011, when the auditors first arrived, the gaps decreased to zero.

[29] As part of the gap in row number analysis, the CAS conducted another comparison. The hard copies of chits and sales reports provided to the auditors during the several weeks of observation were contrasted against a secondary copy of the POS data retrieved at the end of the observation phase.

[30] The CAS concluded that there were inconsistencies and mismatching of information between the hard copy report and the POS data. For example, Bill #20551 in hard copy form did not have the same table number as Bill #20551 from the POS data, or where the hard copies said voided by Wilson the POS system indicated N/A.

[31] The bills had been renumbered using an electronic program. The CAS explained that these types of gaps are not something that can be manipulated by hand. The analysis also suggested that the data and records provided to CRA were incomplete.

#### (ii) Audit Findings – Hamilton Co. Assessment Methodology

[32] The CRA auditors used the bank statements provided by the shareholders and created a bank summary of Hamilton Co.’s monthly bank deposits. The analysis reconciles the amounts deposited with the income reported on the corporation’s income statements.

[33] The information was organized into identified and unidentified deposits based on whether the CRA could identify the source of the deposit: Visa, MasterCard or debit. During 2009, a total of \$642,996 was deposited and only

\$32,757 was unidentified. The auditor testified that she concluded, based on this summary, that not all cash sales were being deposited.

[34] In response, Mr. Chen admitted that not all cash sales were deposited in Hamilton Co.'s bank accounts. Instead, some of the cash would be used to purchase supplies such as vegetables. Up to \$100 a day might be used for such purposes, but Mr. Chen asserted that the remainder of the cash was deposited in the corporation's accounts.

[35] The CRA auditors also prepared a wage projection to reconcile the payroll reported on Hamilton Co.'s financial statements to the payroll reported to CRA. In 2009, the salary and wages reported on the financial statements were \$51,000 higher than reported to CRA. The auditor offered that the payroll amount appeared less than that necessary to support the business operated by Hamilton Co. The auditor concluded this suggested that employees were being paid in cash and cash amounts were not reported on the respective T4 summaries submitted to CRA.

[36] The auditors prepared a sales analysis which summarized and organized the restaurant's sales over the 8 week CRA observation phase. Each day was divided into various categories including lunch, dinner, number of guests, total sales, total cash sales, and total credit card sales. This information and analysis were created using the chits which the auditors obtained from Hamilton Co. Where the chits were unclear or where a chit was missing, the CRA auditors did not include such information in the calculation.

[37] Cash and credit card receipts were summarized separately. All debits, credits, free meals, and coupons were included under credit. The auditors concluded that cash sales made during the 8 week observation phase represented 57% of all sales. Tips were not included in summaries. The auditors sought to determine the number of customers. For the "all you can eat" chits, the number of customers were easily determinable based on the number of "all you can eat" orders. It was more difficult to determine this number for "set menu" chits. The auditor testified that in the latter situation, a conservative number of guests was assumed.

[38] Using this information, the auditors used three projection methods to estimate sales and ascertain unreported cash sales: the capacity method, the chopstick method and the cash sales percentage trend. Only the cash sales percentage trend was used for the assessment because it was the most conservative



and consistent method, given data available and the nature of Hamilton Co.'s business. The remaining two methods were used as controls.

[39] The capacity method provided an estimate of revenue based on the average meal price of \$21.44 and a weekly customer base of 880. The capacity projections estimated that the under reported sales for each year were \$319,018 in 2009 and \$416,522 in 2010. The non-existence of POS data for the 2009 year and limited POS data for the 2010 year caused the auditors to reject this method.

[40] A chopstick projection was completed based on the average meal price of \$21.44 and the number of chopsticks purchased during the year. The chopstick projections estimated that the under reported sales for each year were \$489,054 in 2009 and \$92,172 in 2010. During on-site observations, the CRA auditors concluded that the inventory was ordered as needed since there was minimal inventory and minimal storage space. Again, this method was ultimately rejected by the CRA auditors because of its potential overstatement of unreported income.

[41] As well, a cash sales percentage trend analysis was performed based on the average cash and "card" split from the 8 week observation phase and the reported revenue recorded in Hamilton Co.'s financial statements for 2009 and 2010. The cash sales projection trend estimated that the under reported sales for each year were \$203,492 in 2009 and \$263,893 in 2010. This was the method used for the assessment.

[42] The CRA auditor explained the precise methodology. Based on the 8 week observation phase, the average cash split was 57%. However, because the location then housed an ATM machine and because the CRA auditors observed during the audit that customers were directed at the restaurant to withdraw cash from the ATM instead of paying by debit, it was determined that the 57% cash split likely included cash withdrawals from the ATM. Consequently, CRA acquired the ATM amounts from the ATM owner. The entire ATM amounts were deducted from the cash split. The remaining cash split, which was used in the projection, was approximately 29%. Further, since the bank statement summary demonstrated that little to no cash was deposited in 2009 and 2010, CRA concluded that the reported sales represented only the card transactions (or 71% of the total sale transactions).

### (iii) ATM Data Confirmation

[43] A representative of TNS Smart Networks ("TNS") testified regarding the ATM transactions at Hamilton Co.

[44] Testimony by a TNS representative confirmed that TNS processes ATM transactions in Canada. TNS services the ATM terminals. TNS operates as the connection point to the payment networks for ATMs whereby ATMs connect to the TNS network. TNS then processes the transactions from these terminals using their network to Visa and MasterCard. Simply stated, TNS is told where funds need to go and TNS disburses those funds.

[45] During the testimony, a transaction detail report was described. This report contained all of the transactions from January 1<sup>st</sup>, 2012 to March 31<sup>st</sup>, 2012, associated with the ATM terminal located at Hamilton Co.

[46] The transaction detail report was associated with the ATM terminal ID TNS 4B54, which is a specific identifier associated with the particular ATM at Hamilton Co. on the TNS network. The transaction detail report is regularly prepared by TNS. It reflects real time data and is based on the information from the ATM transactions. The report indicates: the terminal ID; sequence number, which is an identifier associated with each transaction; date and time of the transaction; issuer of the card, like a bank or other financial institution; and, card type, chip or magnetic band. It also identifies: whether the transaction was processed using the chip or magnetic band; account type; requested amount; surcharge amount, which is defined by the ISO; the merchant; authorization amount, which is the requested amount plus the surcharge; a response code, which provides information to the ISO on how the machine is operating; and, the transaction status.

[47] The TNS witness would not speculate as to why any end user would withdraw a certain amount over another amount.

e) *The Kitchener Co. Audit Specifically*

[48] Two different CRA auditors were assigned to the Kitchener Co. file along with two CAS members. The CRA auditors physically observed the location from January 4 to January 10, 2012.

[49] The CAS retrieved the POS data during the “Initial Contact Phase”. Another CAS analyzed the data and prepared the summary report. As is customary, an untouched copy of the raw data was retained.

[50] Concerns were raised with unreported sales and missing split transactions from data. Based on the auditor’s findings, it was determined that the books and records of the restaurant were not reliable. Therefore, the auditors considered the

alternate assessment through various indirect verification methods to audit the restaurant.

(i) Kitchener Co. POS Findings

[51] Four main analyses were performed using the POS data at Kitchener Co.: a splits analysis, a sales analysis, a customer analysis, and a numbering analysis. According to the CAS at Kitchener Co., because databases are very logical and transactional, anomalies suggest changes or deletions in the records. The CAS further concluded based on all of her analyses, that POS records were deleted and that these records were deleted using some sort of suppression software. The CAS was not able to detect who would have installed the software.

[52] The CAS explained again that the SimPOS system used by Kitchener Co. is a relational database that tracks a variety of data into associated multiple tables. Throughout her testimony, the CAS referred primarily to the following three main data tables: header table, detail table, and tender table.

[53] The “Header Table” summarizes and tracks a specific restaurant table. In particular, the Header Table includes a Primary Key, Open Bill Time, Close Bill Time, Table No., Sales Total Figure, Application Taxes, GST, PST, Liquor Tax, and Status Codes (completed order, split bill, voids). This table notes which server input the information and any additional notes made. The “Detail Table” outlines the details of the order and each modification. In particular, the Detail Table includes Transaction Numbers, Items Numbers, Item Descriptions, Quantity, Price of the order, and Net Price. The “Tender Table” tracks the amount and method of payment for each transaction number. Specifically, the table includes the Amount, Type, and Primary transaction number to link the transaction back to the order.

[54] According to the CAS, almost 50% of all transaction records under the Header Table were split into sub-bills. Consequently, because of the high percentage of split records, two types of split analysis were performed to verify the continuity of information and gaps within the data between the split bills and the pre-split bill. When a bill is split, the split bill retains the table number, employee number, and open time of the original bill and certain virtual fields, whereby VIPCUST field and TABLENUM field are populated and link the split bills back to the pre-split bill.

[55] The CAS analysed the records using the VIPCUST field and the TABLENUM field to determine whether there were gaps in the split table numbering sequencing that occurs when a bill is split.

[56] For example, using the VIPCUST field, if a bill from table "A" were split into three but the records only show records marked "A1" and "A3", the analysis would indicate there is 1 gap ("A2"). The analysis, however, only picks up missing records that are between records. In other words, if the table bill were split into three but the records only show records marked "A1" and "A2", the analysis would not pick up that the record "A3" was missing.

[57] Both types of analysis provided similar gap results and the split analysis suggested records were removed from the database. The projection of potential value of missing sales using the VIPCUST gaps multiplied by the average daily cash transaction was \$14,998 in 2009, \$67,651 in 2010, and \$37,690 in 2011. The projection of potential missing sales using the TABLENUM gaps multiplied by the average daily cash transaction was \$10,721 in 2009, \$56,230 in 2010, and \$41,507 in 2011. The CAS testified that the average cash transaction was used because cash sales carry the greatest risk for underreporting and cash transactions tend to be smaller in amount than card transactions.

[58] A numbering analysis was performed in order to identify any inconsistencies among the Header, Detail, and Tender Table. It was determined that in 52 instances out of 85,000, the payment method attached to a sale was almost double the sale amount. While 52 is a very small number, it was noted that there should be no variance and that this type of variance suggests that a sales record was deleted. The analysis revealed another anomaly. A record was discovered with different dates and times for the same transaction number.

[59] Based on the numbering analysis, it was concluded that the anomalies were indicative of a collision in the database created by deletion software with the original date and not by human deletion.

[60] A customer analysis was performed to reconcile the customer accounts with the customer orders. The CAS explained that the SimPOS database assigns a customer number to each customer placing an order, whether for pick up or delivery. Every customer number should be connected to an order. If there are customer records that do not have a corresponding order, this anomaly in the system suggests that the sale has been deleted from the database.

[61] The customer analysis revealed that from October 1, 2009, 11 out of 210 customer accounts had no corresponding transaction. The mismatch in the analysis cannot be explained by a customer calling to cancel an order or never actually placing an order. If a customer placed an order and later cancelled that order, the system would retain the customer record but mark it as void. Also, if an order were never placed, then no customer record would exist.

[62] A sales analysis was performed to review trends in the sales and payments used and to identify anomalies in these trends. This type of analysis helps identify the months for the auditors where there are greater variances in sales. Based on this analysis, it was observed that during the first few months of 2011, the restaurant stopped accepting debit cards directly from customers. Cash sales increased significantly. In particular, cash transactions increased from an average of 30 to 41 per day. Credit card transactions remained constant.

[63] The CAS projected the missing transactions using the average cash bill multiplied by the potential 11 daily missing transactions. Based on this projection, from February 28, 2009 to November 30, 2011, there were potentially unreported sales of \$287,151 and unremitted GST of \$26,176. A similar projection was also done by assuming that the credit card percentage remained constant and that cash and debit together represented 64% of all transactions. Based on this projection, there were potentially unreported sales of \$332,706 and unremitted GST of \$34,485 for the period.

(ii) Audit Findings – Kitchener Co. Assessment Methodology

[64] The CRA auditors used the bank statements provided by Kitchener Co. and created a bank summary of the corporation's monthly bank deposits. The objective of this summary was to compare the deposits made in the bank account to the recorded and reported revenue. The auditor testified that a small amount of cash, approximately \$10,000, was deposited into Kitchener Co.'s bank account and therefore concluded that not all cash was being deposited.

[65] The bank statements were compared with the POS card sales. This revealed that amounts deposited were higher than the POS data. After factoring out an estimated \$55,013 in tips that may have been included in the deposits, a variance still existed between bank statements and the POS data nearing \$32,000.

[66] The CRA auditors prepared a sales analysis to project sales per day based upon the average number of bills per day and the average meal price. The

conclusion was unreported revenue per year in the amounts of \$160,590 in 2010 and \$193,084 in 2011. This projection was the basis for the arbitrary assessment.

[67] The average number of bills and average meal price were determined from the data collected during the observation phase and from the sales slips collected by the auditors for the following several weeks. During the observation phase, the auditors recorded the number of guests, times, table number, and method of payment. The CRA auditors then received daily closing summary reports from the POS system and compared the report to the observations.

[68] By way of explanation, the average number of bills was used to project unreported revenues because the auditors observed an increase in transactions during their observations as compared to the number recorded during the audit period. Testimony confirmed that during the observation phase, the number of transactions increased by 40%.

[69] It was concluded that the average number of additional transactions during the observation phase represented the value of the unreported sales. From 2010 to 2011, reported revenues had actually declined and no new advertisement efforts or promotions were offered during the observation phase. Inexplicably, in that period, transactions increased from 55 to 77 per day. Seasonal trends were considered.

[70] Additionally, since there were no internal controls in place to ensure all transactions were entered into the POS system, it was concluded that the risk of circumvention was high. This conclusion was consistent with the CAS's determination that information was missing or deleted from the POS database.

[71] Unlike Hamilton Co., a cash sales trend analysis was not done. The CRA auditor observed a change in the number of cash and debit card sales which suggested that the taxpayer was not operating the business in the same way during the CRA observation phase. Prior to the installation of the ATM, the POS data indicated that cash sales represented 20% of all sales, but after the ATM was installed, cash sales increased to 45%. Conversely, debit card sales were originally 38% and then decreased to 3%. During the 8 week CRA observation phase, however, debit card sales increased to 17% and, afterwards, reverted to 3%.

[72] Two further supporting projections were also completed: a wage projection and a chopstick projection. These projections did not form the basis of the assessment, but were used as control analyses.

[73] A wage projection was performed for the purpose of comparing the hours worked by employees (excluding shareholders) to corresponding T4 slips. Based on this projection, it was estimated that there were net unreported revenues of \$168,247 in 2010 and \$181,878 in 2011.

[74] In order to estimate wages, it was observed that there were 6 employees working every day at all times: 2 kitchen staff, 2 sushi chefs and 2 wait staff. The restaurant was open 11 hours each day during the week and for 11 and one-half hours each weekend. This hourly information was taken from the website, takeout menus and interviews with the owners. The minimum wage per position informed the restaurant's weekly employee expenses. Based upon the reported T4 earnings and the estimated hours required to operate the restaurant, Kitchener Co. paid employees \$2.64/hour in 2010 and \$1.42/hour in 2011. Obviously, this was incorrect.

[75] The auditors concluded that there were significant variances between the amount of wages recorded and the amount of wages calculated through projections. Wages per year were estimated as \$239,785 in 2010 and \$239,785 in 2011 as compared to the reported wages per year of \$63,749 in 2010 and \$34,263 in 2011. The auditor testified that this finding suggested that unreported income was being used to pay unreported wages.

[76] A chopstick projection was completed based on the average meal price of \$18.66 and the number of chopsticks purchased during the year. This projection was then compared to reported sales. The chopstick projections suggested that unreported sales for 2011 were \$126,795. In 2010, since there were fewer chopsticks purchased than required, the projection provided inconclusive results. Inventory, like that of Hamilton Co., was ordered as needed. The auditors obtained the invoices for the chopsticks from the third party chopstick vendors and compared those invoices to the books and records of the restaurant. A discrepancy of 6000 chopsticks was noted.

f) *Reporting Information/Tax Returns*

[77] A chartered accountant for both Hamilton Co. and Kitchener Co testified. During the appeal years, the accountant recorded all sales and expenses, filed HST returns, prepared the payroll, and prepared and filed the corporate tax returns. She did so based upon information provided by the Appellants: a printed copy of the monthly sales reports generated from the POS system. She testified that these monthly sales reports included all recorded cash, debit, and card sales. She

admitted that she did not have access to the POS systems or the electronic data stored on the POS systems to verify this.

[78] The Appellant, Mr. Chen, provided the monthly sales report to the accountant. He also asked the accountant to prepare and file corporate tax returns for Hamilton Co. and Kitchener Co. Mr. Chen testified that he had an opportunity to review these returns, observed that the information on the returns matched the information from the sales report, approved and signed the authorization the tax returns to be e-filed.

[79] Mr. Lin testified that he would only provide the monthly sales report for Hamilton Co. to the accountant in the event that Mr. Chen was unavailable. As noted above, Mr. Lin had no affiliation or involvement with Kitchener Co. He also testified that he did not review the corporate tax returns.

[80] Mr. Chen's personal tax returns were also prepared by the accountant. Mr. Chen indicated that he only provided the accountant with T4s to prepare his personal tax returns. He admitted that he reviewed the returns, observed that the amounts corresponded to the T4 amounts, approved the returns, signed the authorization and asked the accountant to file his returns.

[81] No evidence was provided regarding the preparation of Mr. Lin's personal tax returns.

g) *Kitchener Co. Rent Expenses and Rent Benefit*

[82] Mr. Ping was a kitchen employee at Hamilton Co. in 2007 and left in 2012. He lived next to the restaurant and testified that the "bosses" paid his rent. He identified Mr. Chen and Mr. Lin as the "bosses".

[83] With respect to Kitchener Co., CRA analyzed the rental expenses to determine and verify who received the payments and the purpose of the payments. The auditor testified that the general ledger indicated that there were three rental payments to the following payees: 2155050 Ontario Inc., 1420898 Ontario Inc., and an automatic payment to Homestead Land Holdings Limited ("HLH").

[84] CRA performed property searches. These searches revealed that the payments to 1420898 Ontario Inc. were for Kitchener Co.'s rent, that Mr. Chen lived at the property owned by HLH, and that the property owned by 2155050



Ontario Inc. was located in Kitchener. The search did not indicate who lived at the last property.

[85] Mr. Chen admitted that Kitchener Co. paid money for staff accommodations. According to Mr. Chen, this is very standard practice for small restaurants outside Toronto. It allows the attraction and retention of staff who would otherwise remain in Toronto. Mr. Chen, testified that the rent expenses for Kitchener Co. did not include payment for his own personal rent. Mr. Chen also admitted that the rental amounts for staff accommodations were not reported on the staff's respective T4s, but were deducted as rent expenses for Kitchener Co.

[86] The Respondent tendered into evidence two further affidavits compliant with the *Canada Evidence Act*: the affidavit of Masako Monica Ozawa-Chu, Director of Operations for Ozawa Canada Inc.; and, the affidavit of Peter Blyth, an employee of Debit Express, the company that owned the ATM in question. These affidavits related to the chopstick counts and ATM records for Kitchener Co., respectively.

h) *Positions of the Parties*

(i) The Appellants on various issues

[87] The Appellants provided only brief submissions sprinkled with residual evidence and did not make submissions on all of the issues. This was consistent with their failure to testify on other issues before the Court.

[88] Mr. Chen testified that the POS data were accurate and correctly reported the sales for both locations. In response to the Respondent's assertion that the POS data were altered to delete sales at both locations, Mr. Chen stated that he had no knowledge of the POS system being manipulated.

[89] In response to the Respondent's suggestion that the sales reported on corporate tax returns did not include all cash sales, Mr. Chen again stated that he had no knowledge of missing or altered data. He emphasized that he took care of the business, but had little knowledge of computers. If a problem arose with the POS system, he would contact the Vendor to fix it.

[90] In response to the Respondent's assertions that the POS system was altered and that the sales were being underreported to exclude cash sales, Mr. Lin stated that he never heard about it and did not think that was correct.

[91] Concerning Hamilton Co. and Kitchener Co., the Appellants submitted that the chopstick analysis was not an accurate projection method. The Appellants asserted that a significant number of chopsticks were used for employee meals throughout the course of the year and that the restaurant regularly provided additional chopsticks for take-out orders beyond the assumed number.

[92] Regarding the data retrieved from the ATM at Hamilton Co., the Appellants submitted that it was incorrect for CRA to include the ATM withdrawals in the projections for the restaurant's income. The Appellants asserted that the Transaction Detail Report indicated certain withdrawals were significantly higher than would be needed to pay for a meal at the restaurant. Therefore, this suggests that the ATM data included withdrawals from persons other than customers. The Appellants also submitted that it was not appropriate to base any projections off the data retrieved after the renovations. Post renovations, the restaurant was larger, the prices of the meals had been raised, and during the CRA observation phase, the restaurant had greatly increased its promotions and advertisements.

[93] Regarding the penalties assessed against Mr. Chen, Mr. Chen stated that the evidence before the Court, in particular the summary reports of the data analysed from the SimPOS system data reports do not indicate that Mr. Chen specifically deleted any records and asserts that it is unfair that he is assessed for any appropriated funds. No submissions were made with respect to the penalties assessed against the corporate Appellants or against Mr. Lin.

[94] Mr. Chen also asserted that the Rent Benefit claimed as a business expense, was a mistake. He initially lived with employees and claimed he paid the rent expense as those employees' accommodation cost. This saved money. He mistakenly continued to claim these amounts once the employees moved out.

(ii) The Respondent

1. On Unreported Sales

[95] The Respondent's position is that the POS records for both Hamilton Co. and Kitchener Co. were manipulated to delete sales.

[96] In particular, the evidence of data manipulation found by the CASs, the inconsistencies between the amount of cash sales and the corporate bank deposits, and the reported employee expenses all demonstrate that there were unreported sales. On that basis, the Respondent submits that the Minister concluded that it

could not rely on the corporate records; it was necessary to use alternative methods to determine the corporation's unreported sales.

[97] Regarding Kitchener Co., CRA reassessed the corporation based on a sales analysis. CRA also conducted three (3) separate analyses as secondary methods to verify the reasonability of the sales analysis. Regarding Hamilton Co., the Minister reassessed the corporation based on a cash percentage projection analysis. The Minister also conducted, but rejected secondary analyses to support the reasonability of the cash percentage projection analysis. The Appellants' assertions concerning the invalidity or unfairness of CRA rejected methods is irrelevant. The Respondent further asserts that the CRA accounted for the renovations in its assessment and that the ATM data retrieved was included to reduce the assessment of sales.

[98] Additionally, the Respondent submits that where the facts suggest that the Appellants have not provided reliable evidence or facts to the Minister, the Minister is entitled to assess the taxpayers using an arbitrary method under subsection 152(7). The Respondent asserts that the Appellants have neither established that the conclusions of the analyses are unreliable, nor have they demolished the Minister's assumptions in that regard.

## 2. On Shareholder Benefits

[99] On the basis of the corporate reassessments, Mr. Chen and Mr. Lin were reassessed shareholder benefits. The Respondent asserts that the Court may infer from the unreported corporate income, the lack of cash deposits into the corporate bank accounts, and the absence of an explanation from the Appellants regarding the destination of such funds that Mr. Chen and Mr. Lin appropriated the money.

## 3. On Kitchener Co. Rent Expenses

[100] The Respondent's position is that the rent expense amounts claimed by Kitchener Co., and denied by the Minister, were for staff residences and/or Mr. Chen's personal residence. Such amounts were not paid for the benefit of Kitchener Co., but as personal benefits to a shareholder or third party. They were not so reported. Penalties should apply on that basis.

## 4. On Penalties

[101] Respondent's counsel submits that the manipulation of the POS data was done knowingly and intentionally to delete sales. As such, the income tax returns for Hamilton Co. and Kitchener Co. contained knowing false statements. Accordingly, penalties should be imposed on that basis.

[102] Regarding the penalty assessed against Kitchener Co. for claiming the excessive Kitchener Rent Expenses, the Respondent asserts that the payment of Mr. Chen's personal rent is clearly not a permissible expense and that Mr. Chen, as the person reviewing and authorizing the corporate tax returns, knew or ought to have known that this expense should not have been claimed.

### 5. On Remaining Issues

[103] The Respondent submits that the Appellants called no evidence regarding (i) the Hamilton Rent Expenses; (ii) Cost of Goods; (iii) Bonus to Worker; (iv) the Kitchener Rent Expenses; (v) Auto Benefits; and (vi) Capital Gain. Therefore, the Appellants have not discharged their respective and/or combined burden of proof on those issues and the appeals on those issues are not entitled to succeed.

## III. THE LAW

### a) *Arbitrary Assessments*

Subsection 152(7) of the *Act* provides as follows:

#### **Assessment**

#### Section 152

[...]

#### **Assessment not dependent on return or information**

(7) the Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

[104] The Minister is not bound by a return filed by a taxpayer where she views such returns to be unrepresentative of a taxpayer's income. The Minister asserts just such a situation in this case concerning all Appellants. As such, the Minister arbitrarily assessed all four Appellants under these provisions.

[105] The Appellants produced no records representing, approaching or even approximating any determination of income, other than the tax returns submitted previously to the Minister and the partial POS data which had been altered. It is noted that these documents drew the attention of the Minister and caused the Hamilton Co. and Kitchener Co. audits.

[106] The fact that no reliable source records of any kind existed justified the Minister's conduct and reassessment under subsection 152(7): *Malone v. HMQ*, 2006 TCC 313.

[107] Similarly, the allocation of shareholder benefits to a taxpayer's shareholder is justifiable where that benefitting taxpayer is a shareholder: *Rancourt v. HMQ*, 2005 TCC 709.

[108] In conducting such an arbitrary assessment, especially of an operating business, the Minister must use the proper method, apply it sensically and not exclude adjustments to enhance the assessment: *Dziwenk v. HMQ*, 81 DTC 657.

b) *Burden of Proof*

[109] No better a statement on the issue of burden and onus concerning arbitrary assessments has been made since President Thorson of the Exchequer Court in the case of *Dezura v. MNR* [1948] Ex. CR 10 stated:

The object of an assessment is the ascertainment of the amount of the taxpayer's taxable income and the fixation of his liability in accordance with the provisions of the Act. If the taxpayer makes no return or gives incorrect information either in his return or otherwise he can have no just cause for complaint on the ground that the Minister has determined the amount of tax he ought to pay provided he has a right of appeal therefrom and is given an opportunity of showing that the amount determined by the Minister is incorrect in fact. [...] Ordinarily, the taxpayer knows better than anyone else the amount of his taxable income and should be able to prove it to the satisfaction of the Court. [...] If, on the other hand, he fails to show that the amount determined by the Minister is erroneous, he cannot justly complain if the amount stands.

[110] The arbitrary assessment has been described as a blunt instrument. However, it is deployed only where the taxpayer fails to provide a return or provides one that is inaccurate and incomplete.

[111] Within the context of arbitrary assessment, the Appellants, like all others, have an opportunity to demolish the Minister's assumptions concerning the assessment by:

- (i) submitting accurate records to refute the need for the arbitrary assessment;
- (ii) attacking the methodology used by the Minister's agents in assessing the Appellants; or
- (iii) disputing the quantum of the reassessment.

#### IV. ANALYSIS AND DECISION

[112] As stated above, the Minister's necessity to undertake an arbitrary assessment has not been refuted. No evidence was led to suggest the returns were accurate and based upon reliable, cogent and fulsome records.

a) *Was the Methodology of the Arbitrary Assessment Sound?*

[113] For Hamilton Co., the premises, both as to size and operations were quite dynamic. It expanded considerably, renovated and closed during that process. As such the Minister's agents utilized a ratio of revenue between cash sales and credit and debit card sales during the period it did operate.

[114] Overall, the detail, balance and deliberation of the Minister's agents were unassailable. Concerning Hamilton Co., alternative methods were used as controls, but unutilized to assess because of resulting inflated income. Similarly, concessions, although minor and actually leading to an understated assessment, were employed. This probity added legitimacy to the approach and result.

[115] The Court is equally satisfied with the Kitchener Co. reassessment. The method utilized fit the circumstances completely; a sales analysis method yielded the most reliable and conservative unreported income projection, once the taxpayers' records were determined to be unreliable, because of the inexplicable and unwarranted alteration of POS sales records. The auditors used a chop stick projection and wage projection, by way of excluded comparison, to support the sales analysis method for the Kitchener Co.

[116] Lastly, with respect to both locations, no evidence was marshalled to seriously challenge the CRA's calculations of the quantum of unreported income.

b) *Shareholder Benefits*

[117] Subsection 15(1) of the *Act* provides as follows:

**Benefit conferred on shareholder**

**15 (1)** If, at any time, a benefit is conferred by a corporation on a shareholder of the corporation, on a member of a partnership that is a shareholder of the corporation or on a contemplated shareholder of the corporation, then the amount or value of the benefit is to be included in computing the income of the shareholder, member or contemplated shareholder, as the case may be, for its taxation year that includes the time, except to the extent that the amount or value of the benefit is deemed by section 84 to be a dividend or that the benefit is conferred on the shareholder

[118] Unreported income for both Hamilton Co. and Kitchener Co. was established and reassessed. Such income, at the least to the extent of cash, was not deposited into the bank accounts of Hamilton Co. or Kitchener Co. The Appellants led no evidence to suggest it was. In fact, Mr. Chen admitted certain amounts were not.

[119] The unreported income never finding its proper home with the corporations, its lawful owners, implies strongly that the controlling party or parties of each corporation, namely, the shareholders and directors, received it. Where such errant amounts exist, if there are no records of how, why or when such a dividend or bonus was declared and paid, then deductively the receipt is a benefit conferred under subsection 15(1) of the *Act* to the shareholder: *R v. Pillsbury Holdings Ltd*, 64 DTC 5184 (Ex. Ct) at page 5186.

[120] The Appellants offered no evidence that the assessed unreported income as cash did not exist or that the income as cash was not received by them. As such, the Court has no factual basis before it to conclude the Minister's assumptions are incorrect. The shareholder benefits assessment must stand.

c) *Penalties*

[121] Subsection 163(2) of the *Act* provides as follows:

**163(2)** Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return [...] filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty [...]

[122] There are two essential elements to the application of the penalty: (1) the making of a false statement in a return, and (2) making that false statement with the requisite mental element of fault.

[123] The following disparity between reported and unreported sales and/or income is as follows:

<b>Appellant</b>	<b>Taxation Year</b>	<b>Reported Sales/ Income</b>	<b>Actual Sales/ Income</b>	<b>Percentage difference</b>
Hamilton Co.	2009	\$646,083	\$898,299	28%
	2010	\$498,206	\$685,491	27.3%
Kitchener Co.	2010	\$614,607	\$775,197	20.7%
	2011	\$582,114	\$775,197	24.9%
Mr. Chen	2009	\$18,118	\$131,946	86.2%
	2010	\$33,386	\$192,480	82.6%
	2011	\$25,009	\$109,083	77.1%
Mr. Lin	2009	\$36,101	\$131,946	72.6%
	2010	\$45,530	\$101,746	55.2%

[124] In order to find that subsection 163(2) penalties are warranted, the Court must determine that false statements were firstly made and, secondly, made either knowingly or in circumstances where the taxpayer is wilfully blind to the false statements having been made. The taxpayer may be wilfully blind to the need for inquiry and consequently chooses not to enquire into the abnormality because the taxpayer chooses to ignore or avert focus from the truth: *Wynter v. HMQ*, FCA 195 at paragraph 13 and 16. In a similar view, wilful blindness occurs where the false statement is made or allowed to stand by action or omission tantamount to intentional acting or indifference to lawful compliance: *Venne v. HMQ* [1984], CTC 233 (FCTD) as cited by *Guindon v. HMQ*, 2015 SCC 41 at paragraph 60.



(i) Kitchener Co.

[125] The one-half shareholder of Kitchener Co. was Mr. Chen. He operated, managed and supervised the restaurant on-site. The restaurant operation was the sole business of Kitchener Co. The testimony of the CRA auditor and findings of this Court are that POS data and related recording system were manipulated to delete sales. The sole source of the sales data was the POS recorded entries.

[126] Ultimately, the returns of income for Kitchener Co. were viewed and executed by Mr. Chen. Cash sales were not consistently deposited into Kitchener Co.'s bank account.

[127] Once the audit was undertaken, behaviour and financial data changed. Recorded debit card sales rose during the audit from 3% to 17%. After completion, they reverted to 3%.

[128] On balance, the evidence indicates the reported sales were knowingly misstated in the tax returns. Mr. Chen's suggestion that it was perhaps an indeterminate third party who for unknown reasons deleted the sales records is not credible. The audit was undertaken with Mr. Chen's knowledge. The change in behaviour during the observation phase revealed a methodology behind sales revenue suppression. It occurred under his watch and during his presence. The suggestion that some third party, without any interest or motive, was the author of the cash removal is unsupported. The parallel behavioural modification observed during the audit at Hamilton Co. further suggests a pattern of knowledge and deliberation on Mr. Chen's part.

(ii) Hamilton Co.

[129] Mr. Chen and Mr. Lin were equal shareholders in Hamilton Co. Beyond this, the behavioural pattern was close to identical: not just unreliable, but no POS data for part of the appeal period; deletion of sales from the POS system in subsequent years; such unreliable POS data being the sole source for sales calculations; review and signing of tax return; limited deposit of cash sales; and, substantial underreporting of sales in both appeal years representing approximately 27% of total sales. Similarly, there was an unexplained, but patterned approach to which sales were logged into the POS system, such as credit card sales, and those, which were not, cash sales. Conclusively, method of traceable payment, more likely than not, determined whether amounts were deposited and recorded.

(iii) Mr. Chen

[130] As author of the Kitchener Co. and Hamilton Co. unreported sales, Mr. Chen, more likely than not, knowingly underreported the sales of both companies. His uncorroborated suggestions otherwise, were not credible. The unreported and undeposited cash more likely than not landed in one place: Mr. Chen's hands. As to the penalty concerning the Kitchener Rent Expenses relating to Mr. Chen's personal residence, a similar conclusion is reached. The only reliable evidence before the Court is that Mr. Chen knew of such payment, benefitted personally from it and knowingly authored the false statement in the corporate return of income or failed to record it as a shareholder's advance.

(iv) Mr. Lin

[131] Mr. Lin's name appeared in the POS records of Hamilton Co. as the author of transactions erasing revenue generating transactions. The erasure of these transactions suppressed income. Cash generated from such unrecorded transactions was not recorded. On balance, Mr. Lin was aware of this deliberate act. As such, his penalties concerning the unreported income shall stand.

V. SUMMARY

*No tendered evidence on certain issues*

[132] The Minister's assessments on the following issues shall prevail because the Appellants failed to usher any evidence to refute the Minister's assumptions:

- (i) the Hamilton Rent Expenses;
- (ii) the Cost of Goods for Hamilton Co.;
- (iii) the Bonus to Worker paid by Hamilton Co.;
- (iv) the Kitchener Rent Expenses;
- (v) the Auto Benefits assessed against Mr. Chen; and,
- (vi) the Capital Gain assessed against Mr. Lin.

*Unreported Income and Shareholder Benefits*

[133] The evidence of unreported income concerning Hamilton Co. and Kitchener Co. was unassailed by Mr. Chen and Mr. Lin, save for bold and general arguments that it was not correct. The Minister demonstrated that the financial records and returns of income for Hamilton Co. and Kitchener Co. were unreliable, inaccurate and/or non-existent. As such, arbitrary under subsection 152(7) assessments were required. They were carried out with precision and balance. The unreported income assessments are upheld. Similarly, no evidence was tendered to suggested the underreported income, mostly comprised of undeposited cash receipts of Hamilton Co. and Kitchener Co., ended up anywhere, save the hands of Mr. Chen and/or Mr. Lin.

*Penalties*

[134] Given the complicity of Mr. Chen and Mr. Lin in the knowing understatement of income for the corporate Appellants, the penalties remain. The Minister proved, on balance, in multiple ways the requisite participation and knowledge of Mr. Chen and Mr. Lin in the suppression of sales data, deliberate appropriation of corporate cash, and omission in reporting Kitchener Co.'s and/or Hamilton Co.'s unreported income.

*Costs*

[135] One set of costs is awarded to the Respondent in respect of the trial and distinct disbursements throughout. Procedurally, such costs are awarded provisionally to the Respondent subject to the right of either party to make written submissions thereon within 30 days of the date of this judgment, whereupon the Court shall consider such submissions and may vary its provisional cost award, failing which this provisional cost award shall become final.

Signed at Ottawa, Ontario, this 12<sup>th</sup> day of February 2020.

“R.S. Bocock”

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Bocock J.

CITATION: 2020 TCC 26

COURT FILE NO.: 2014-4729(IT)G, 2014-4442(IT)G, 2014-4486(IT)G, 2014-4488(IT)G

STYLE OF CAUSE: LI HUA LIN AND HER MAJESTY THE QUEEN; WEI CHEN AND HER MAJESTY THE QUEEN; 1773548 ONTARIO INC. AND HER MAJESTY THE QUEEN; 1647208 ONTARIO INC. AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto , Ontario

DATE OF HEARING: March 27, 28, 29, 2019 and May 27, 2019

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S. Boccock

DATE OF JUDGMENT: February 12, 2020

APPEARANCES:

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