

BETWEEN:

2251102 ONTARIO INC.,

and

HIS MAJESTY THE KING,

Docket: 2019-457(IT)I

Appellant,

Respondent;

AND BETWEEN:

FALAH ALYAS,

and

HIS MAJESTY THE KING,

Docket: 2019-466(IT)I

Appellant,

Respondent.

Appeals heard together on January 16, 2024, at Windsor, Ontario

Before: The Honourable Justice Bruce Russell

Appearances:

Agent for the Appellant: Alexander Menzies

Counsel for the Respondent: Élise Rivest

JUDGMENT

Each of the two captioned appeals, heard together, is hereby dismissed, the whole without costs.

Signed this 25th day of March 2026.

“B. Russell”

Russell J.

Citation: 2026 TCC 61
Date: 20260325
Docket: 2019-457(IT)I

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2251102 ONTARIO INC.,

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AND BETWEEN:

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Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Russell J.

I. Overview:

[1] These two appeals, each under the federal *Income Tax Act* (Act)¹, respectively brought by appellants Falah Alyas (Mr. Alyas) and 2251102 Ontario Inc. (the Corporation), were heard together on common evidence. At all relevant times Mr. Alyas, one of the Corporation's two equal shareholders, was its sole active shareholder.

[2] Mr. Alyas appeals reassessments of his 2013, 2014 and 2015 taxation years raised by the respondent's Minister of National Revenue (Minister).

¹ Each statutory provision referenced herein is, if not otherwise noted, a provision of the Act.

[3] As well, the Corporation appeals three reassessments raised by the Minister of its taxation years ending June 30 of 2013, 2014 and 2015 (hereafter the Corporation's 2013, 2014 and 2015 taxation years).

[4] Since 2010 and continuing through its 2013, 2014 and 2015 taxation years the Corporation operated a convenience store in Windsor, Ontario named "Gemini Market" and managed by Mr. Alyas.

[5] Mr. Alyas reported net incomes of \$16,243, \$15,471 and \$21,272 respectively for his 2013, 2014 and 2015 taxation years. The Minister considered that these reported amounts were insufficient for Mr. Alyas to have met his household expense obligations for those years.

[6] Consequently, the Minister per Canada Revenue Agency (CRA) carried out a net worth analysis of Mr. Alyas' household expenses for his 2013, 2014 and 2015 taxation years. From this analysis the Minister concluded that Mr. Alyas had received unreported income amounts of \$21,166, \$25,655 and \$38,204 respectively during those taxation years. The Minister reassessed accordingly.

[7] The Minister considered that the source of Mr. Alyas' said unreported income was the Corporation's Gemini Market. The Minister reassessed the Corporation for its 2013, 2014 and 2015 taxation years, adding respective unreported income amounts of \$12,281, \$22,455 and \$39,865. These amounts were calculated based on discrepancies identified by CRA in the Minister's said net worth analysis of Mr. Alyas' household expenses.

[8] As well, the Minister had identified certain accounting errors in the Corporation's books and records made by the Corporation's bookkeeper. Consequently, the Corporation's claimed amounts of costs of goods sold were reduced by \$50,000 and \$25,000 respectively per the appealed reassessments of its 2014 and 2015 taxation years.

II. Issues:

[9] The appellants are continuing with the following three issues, but not other issues that were previously identified:

- a) did the Minister rightly include for the Corporation's 2013, 2014 and 2015 taxation years, unreported income amounts of \$12,281, \$22,455 and \$39,865 respectively;

- b) did the Minister rightly disallow \$50,000 and \$25,000, claimed as costs of goods sold, for the Corporation's 2014 and 2015 taxation years respectively; and,
- c) did the Minister rightly reassess Mr. Alyas' 2013, 2014 and 2015 taxation years pursuant to subsection 15(1) for inclusion of shareholder benefits in the respective amounts of \$21,166, \$25,657 and \$38,204.²

III. Ministerial Assumptions of Fact:

[10] The Minister assumed certain facts, relied upon in raising the reassessments that the appellants subsequently have appealed. The Minister's assumed facts are listed in the respondent's reply pleadings for each of these two appeals.

[11] Each ministerial assumed fact is presumed correct, subject to proof otherwise on a balance of probabilities.

[12] In Mr. Alyas' appeal the Minister's assumed facts, relied upon by the Minister in raising the appealed reassessments are pleaded in the respondent's Reply to the Notice of Appeal (para. 7). They are as follow:

- a) the Appellant (Mr. Alyas) owned 50% of the share capital of the Corporation which operated Gemini Market. Sarmad Najim owned the other 50%;
- b) Mr. Najim is a silent partner;
- c) the Appellant was married to ... (hereafter "his spouse");
- d) Mr. Alyas reported both net business income and total income of \$16,243, \$15,471 and \$21,272 respectively for his 2013, 2014 and 2015 taxation years;
- e) an audit was conducted according to the indirect method of net worth which involves a comparison between the income declared by the Appellant and his spouse versus the personal expenditures and the increase of net assets that were acquired during the [2013, 2014 and 2015] period;

² Transcript, vol.1, p.8

- f) the Appellant and his spouse's yearly cost of living was determined based on a bank withdrawal analysis and the estimates provided by him;
- g) during his 2013, 2014 and 2015 taxation years, non-taxable sources of income for the Mr. Alyas and his spouse consisted of income tax refunds, GST refunds, child tax benefits, Ontario Trillium benefits and the Ontario Energy and Property Tax Credit; and
- h) the substantial discrepancies were found in the amounts of \$21,166, \$25,656 and \$38,204 for the 2013, 2014 and 2015 taxation years respectively (as detailed in the attached schedule...).

[13] In the Corporation's appeal the Minister's assumed facts relied upon by the Minister in raising the appealed reassessments are pleaded in the respondent's Amended Reply to the Notice of Appeal (para. 8). They are as follow:

- a. the Corporation operated under the name of Gemini Market and is owned 50% by Falah Alyas, who operated the business of the Corporation, and 50% by Sarmad Najim, who did not participate in operating the business of the Corporation;
- b. the Corporation operates as a convenience store;
- c. the Corporation's fiscal year end is June 30;
- d. the Corporation was incorporated under the laws of the Province of Ontario on July 20, 2010;
- e. the Corporation's books and records were inadequate;
- f. the bookkeeper "plugged" via journal entry the inventory, shareholder loan and common shares in order to make the balance sheet balance;

unreported revenue:

- g. during the taxation years in issue, the Corporation declared the following taxable incomes (loss): -\$7 (2013), -\$1,009 (2014) and -\$6 (2015);

- h. an audit was conducted using the indirect method of net worth, which involved a comparison between the income declared by the active shareholder (Mr. Alyas) and his household during the relevant period, and the assets, liabilities, personal expenditures and other additions and deductions to the net worth of the shareholder and his household during the relevant period (as detailed in the schedules attached and forming part of this reply);
- i. a bank deposit and rough net worth analysis for the 2013, 2014 and 2015 taxation years revealed substantial discrepancies;
- j. during the 2013, 2014 and 2015 taxation years, Mr. Alyas's non-taxable sources of income consisted of his and his spouse's income tax refunds, GST refunds, child tax benefit, the Ontario Energy and Property Tax Credit (OEPTC), and Ontario Trillium benefit (OTB);
- k. Mr. Alyas' yearly cost of living was determined based on bank withdrawal analysis, and the estimates provided by Mr. Alyas;
- l. the audit revealed substantial discrepancies in the amounts of \$21,166, \$25,657 and \$38,204 for Mr. Alyas' 2013, 2014 and 2015 taxation years, respectively, and these amounts constituted unreported income of Mr. Alyas for those taxation years, respectively;
- m. the source of Mr. Alyas' unreported income for his 2013, 2014 and 2015 taxation years was unreported sales of the Corporation;
- n. the audit revealed that the corresponding amounts of unreported revenue of the Corporation were \$12,281, \$22,455 and \$39,865 for the 2013, 2014 and 2015 taxation years, respectively (as detailed in...schedules...);

unreported rental revenue:

- o. the amounts of \$7,800 and \$7,200 for the 2013 and 2014 taxation years were added to the Corporation's income as rental revenue;
- p. the shareholder Mr. Elias and his family lived in a house in back of the convenience store;

- q. Mr. Alyas paid rent to the Corporation in the amounts of \$7,800 and \$7,200 for the 2013 and 2014 taxation years respectively;

accounting errors:

Cost of Goods Sold (COGS)

- r. the amounts of \$50,000 and \$25,000 for the Corporation's 2014 and 2015 taxation years were removed from the Corporation's COGS;
- s. the common shares and the inventory were plug figures to balance the Corporation's balance sheet;
- t. the Corporation did not issue any common shares during its 2014 and 2015 taxation years;
- u. the Minister reversed the common share entries by decreasing inventory purchases by \$50,000 and \$25,000 for the Corporation's 2014 and 2015 taxation years.

IV. Law:

[14] The appealed reassessments in these two appeals were raised following the Minister's net worth auditing of Mr. Alyas' household expenses.

[15] Subsections 152(7) and 152(8) which read as follow, entitle the Minister to use any assessment technique, thus including the net worth assessment method:

(7) Assessment not dependent on return or information - 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.

(8) Assessment deemed valid and binding - An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

[16] *In Bousfield v. R.*, 2022 TCC 169 (paras. 16 - 20, 23, 24) colleague Graham, J. stated as follows regarding subsections 152(7) and (8) and arbitrary assessments:

16. Subsection 152(7) allows the Minister to issue an arbitrary assessment or assess a taxpayer using an alternative assessment technique. The subsection does not establish a specific technique that must be used.

17. Alternative assessment techniques should not be the norm. They should be a last resort. That said...poor books and records are not a prerequisite to applying an alternative assessment technique.

18. The Court does not have to be satisfied that it was necessary for the Minister to use an alternative assessment technique. The Minister can use an alternative assessment technique at any time regardless of the state of the taxpayer's records.

19. ... Once the Minister assesses under subsection 152(7), subsection 152(8) deems the assessment to be correct subject to being vacated or varied on objection or appeal.

20. ... reliable books and records are one way that a taxpayer can attack an alternative assessment technique...

23. Unless a year is statute-barred, a taxpayer cannot win by simply showing that the Minister's alternative assessment technique is fundamentally flawed. The Minister will have made assumptions of fact to support her technique, but she will also have made an assumption of fact that the taxpayer earned the income or revenue calculated by that technique. It is up to the taxpayer to demolish that assumption. (underlining added)

24. The taxpayer cannot demolish the assumption by simply showing that the alternative assessment technique is fundamentally flawed. The taxpayer can only demolish the assumption by either showing that the assumed revenue or income was from a non-taxable source or presenting the Court with a viable alternative for determining the taxpayer's revenue or income - be it the taxpayer's own records or some other technique.³ (underlining added)

[17] Also, subsection 230(1) requires a business liable for taxation under the Act to keep accurate books and records to enable proper determination of taxes payable. Subsection 230(1) provides:

Records and books [of business or taxpayer] - Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada...in such form and containing such information as will enable the taxes

³ *Bousfield*, paras. 16-20, 23-24

payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[18] Here, as referenced below, the Minister found the Corporation's books and records were not kept in the form required by subsection 230(1).

[19] The Federal Court of Appeal has stated that the onus on a taxpayer to defeat an assessment is met by proof on a balance of probabilities that assumed facts underlying the assessment are wrong.⁴

[20] To establish that an alternative method of assessment is unreasonable, the appellant must demonstrate "that the method is so erroneous that it cannot be used or by showing such a degree of error in its application that it cannot be used in the particular case."⁵

[21] Specifically, in cases where the Minister assessed a taxpayer using an alternative method of assessment, "and appellant does not show that the alternative estimation method is in itself unreasonable, the appellant must establish that specific corrections must be made to the analysis."⁶

V. Analysis:

Issue 1 - was the Minister mistaken in reassessing the Corporation's 2013, 2014 and 2015 taxation years to include unreported revenues of \$12,281, \$22,455 and \$39,865?

[22] As pleaded in the Amended Reply (para. 8(1)), the net worth audit of Mr. Alyas' household expenses revealed "substantial discrepancies" with respect to what he reported as income in his 2013, 2014 and 2015 taxation years. The Minister determined that the source of Mr. Alyas' added funds was unreported sales of the Corporation's Gemini Market.

[23] Mr. Alyas says that the source of his additional funds was his sole proprietorship (wood construction), however he had only mentioned that at the objection stage rather than earlier, at the audit stage. Also, the Minister had already taken his sole proprietorship into account, in the net worth audit of his household

⁴ *Eisbrenner v. R.*, 2020 FCA 93, para. 24. See also *Hsu v. R.*, 2001 FCA 240 at paras. 23, 30.

⁵ *Bilodeau v. R.*, 2014 TCC 210, para. 107

⁶ *Ibid.*

expenses. Also Mr. Alyas had testified that he spent much of his time at Gemini Market, which was open daily from early morning until late at night.

[24] Mr. Alyas called no witnesses to clarify whether there were other workers involved in the sole proprietorship, so as to work for it while he was managing Gemini Market. Nor was any evidence submitted respecting contracts and sales of his sole proprietorship.

[25] Also, in cross-examination Mr. Alyas acknowledged that he engaged in gambling, using cash, and he had paid child care of \$6,000 in cash in 2015, plus he estimated his four-person family's annual grocery bill as \$500, which certainly strikes one as much less than expected.

[26] The respondent submits that the Minister was entitled to use a net worth assessment method. The Minister has per subsection 152(7) and (8) the discretion to choose which alternative method of assessment to rely upon when assessing a taxpayer.

[27] Ultimately, the appellant Mr. Alyas did not submit evidence sufficient to establish that any of the above referenced ministerial assumptions respecting the net worth audit of his household, which had identified the cash discrepancy as accordingly reassessed, were mistaken.

[28] Also, there was no basis for questioning the Minister's use of a net worth audit of Mr. Alyas' household expenses. The Minister can utilize that audit methodology where there is doubt as to the reported income amounts.

[29] As noted above in *Bousfield*, subsection 152(7) permits issuance of an arbitrary assessment, and thus use of an alternative assessment technique. No specific assessment technique is required.

[30] Ms. P. Milicia who was the CRA auditor in this matter, testified that she had used the net worth arbitrary assessment technique in identifying the Corporation's unreported income. She had chosen to use that technique after determining that the Corporation's books and records were inadequate, inaccurate and thus unreliable; and also that there was insufficient segregation of duties respecting Mr. Alyas' management of the Corporation; and also that the income reported by Mr. Alyas did not support his family's lifestyle; and also that the Corporation's business was a cash-based business.

[31] In *Hsu*, cited above, the then Federal Court Appeal Division endorsed the methodology of a net worth assessment, summarized by Bowman J.T.C.C. as he then was, in *Bigayan v. R.* (1999), 2000 DTC 1619 (TCC) at 1619, as follows:

...[The net worth method of assessment] is based on an assumption that if one subtracts a taxpayer's net worth at the beginning of the 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.⁷

[32] In determining that the Corporation's books and records were inadequate, inaccurate and thus unreliable, deficiencies that Ms. Milicia identified included that the Corporation's bookkeeper used "plug figures" in journal entries for the Corporation regarding its inventory, shareholder loan and common shares.

[33] Ms. Milicia testified that she spoke with the Corporation's bookkeeper who did not deny using plug figures and said that this was to balance the Corporation's balance sheet.⁸

[34] As well, the books and records were not kept current.⁹ Mr. Alyas acknowledged that the bookkeeper updated the Corporation's books and records monthly.

[35] Thus, I conclude regarding the issue of the Corporation being reassessed for unreported income that the Minister did not err in choosing to rely on a net worth audit, and that the appellants have not established that that method was wrongly used. Also, the appellants have not disproven any of the pleaded assumptions of fact relied upon by the Minister in raising the appealed reassessments that reflected unreported income of the Corporation.

Issue 2: Costs of goods sold: did the Minister rightly disallow costs of goods sold in the amounts of \$50,000 and \$25,000, claimed in the Corporation's respective 2014 and 2015 taxation years?

[36] Paragraph 18(1)(a) requires that to be deductible a business or property expense must have been incurred to gain or produce income from the business or

⁷ *Hsu*, para. 17

⁸ Transcript, vol. 2, p. 142

⁹ Transcript, vol. 1, p. 75

property. The Minister disallowed the Corporation's claimed deduction of cost of goods sold in the respective amounts of \$50,000 and \$25,000 for the Corporation's 2014 and 2015 taxation years. This reversed the effect of the "plugged" common shares entries.

[37] The ministerial assumptions of fact, set out above under the heading "costs of goods sold" state that the common shares and the inventory figures were "plug figures" to balance the Corporation's balance sheet. The Corporation had not issued any common shares during its 2014 and 2015 taxation years. Thus, the CRA auditor reversed the false common share entries by decreasing inventory purchases by \$50,000 and \$25,000 respectively.

[38] The appellants led no evidence to dispute those assumptions of fact - as to both what was done and why.

[39] The respondent's witness, CRA auditor Ms. Milicia testified that she undertaken a cost of goods sold analysis to correct for the "plug" figures used by the bookkeeper.¹⁰ She said that the bookkeeper admittedly inserted estimated inventory amounts and had made journal entries "plugging" the common shares to balance the balance sheet.¹¹ As stated the appellants did not call the bookkeeper to testify.

[40] Ms. Milicia explained that these adjustments, disallowing amounts of cost of goods sold, were made because she had found during her net worth audit work that while the Corporation's bookkeeper had made journal entries using "plug figures" for its inventory, shareholder loan and common shares, in fact the Corporation had issued no common shares in its 2013, 2014 and 2015 taxation years. She concluded that the bookkeeper had made these inaccurate internal entries to allow claim by the Corporation of an inflated quantum of costs of goods sold, in the context of a balance sheet purportedly balanced.

[41] In cross-examination Ms. Milicia was asked why she had not reviewed the Corporation's purchases and asked for supporting documentation. Her response was that (as reflected above) she had found the Corporation's books and records to be unreliable, so saw no use in reviewing them to ascertain veracity of the claimed costs of goods sold. The unreliability of the books and records had led the Minister to

¹⁰ Transcript, vol. 2, p. 128

¹¹ Transcript, vol. 2, pp. 140-142

decide to conduct a net worth assessment of Mr. Alyas, to ascertain whether the Corporation had failed to report any income.

[42] She noted also that the amounts relied upon in her net worth assessment working papers as “costs of goods sold” had all been reported by the Corporation in its returns or recorded in its financial statements. She said she had asked Mr. Alyas and his bookkeeper to confirm the amounts noted for beginning and closing inventories. She said that their response was that the specified amounts in the books were good estimates and could be relied upon.

[43] Again, the burden is on the appellants to prove their position on a balance of probabilities, by adducing evidence to support what they say is what the amounts for common shares (none issued) should have been and why the Minister's assessment was wrong. It is no answer to simply say that the Minister's assessment was wrong because it was a net worth assessment rather than a normal CRA audit.

[44] Here the appellants did not call their bookkeeper as a witness to testify as to why plug figures were used. Nor did the appellants call any witness to disprove any of the assumed facts that the Minister had relied in making the contested adjustments for costs of goods sold.¹²

Issue 3: Shareholder Benefits: Did the Minister rightly add amounts of \$21,166, \$25,657 and \$38,204 to Mr. Alyas' income for his 2013, 2014 and 2015 taxation years respectively, as shareholder benefits per subsection 15(1)?

[45] Following the net worth audit the Minister reassessed Mr. Alyas to include in his 2013, 2014 and 2015 taxation year incomes per subsection 15(1) respective shareholder benefit amounts of \$21,166, \$25,657 and \$38,204. The Minister concluded that these amounts were unreported income of the Corporation and subsequently appropriated by shareholder Mr. Alyas.

[46] The appellants argue that the Minister first should have reduced the amount of unreported income appropriated by Mr. Alyas by the \$30,000 that he asserts he loaned the Corporation. However, this factual submission is unsupported by evidence. The appellants did not call evidence to confirm that such a loan had been made.

¹² *Eisbrenner v. R.*, 2020 FCA 93, para. 24

[47] Ms. Milicia testified that the Corporation's bookkeeper had made a journal entry reading "Debit - due to shareholder: \$30,000". This effectively removed \$30,000 from the shareholder loan account in 2013 as part of the "plug figures" referenced above respecting the Corporation's cost of goods sold.

[48] Ms. Milisia stated that she had inquired of Mr. Alyas and the bookkeeper whether the Corporation had ever repaid a shareholder loan made by Mr. Alyas since he had become a shareholder. They said that it had not.

[49] Accordingly, Ms. Milisia reinstated the \$30,000 shareholder loan with the correcting entry: "Credit - due to shareholder: \$30,000" through the process of correcting the bookkeeper's "plug figures" journal entries as a whole.

[50] She clarified that the shareholder loan account had not actually been audited and that it should not be taken as an indication that the Minister accepted that a loan was in fact made by Mr. Alyas to the Corporation nor the validity of the quantum of this alleged loan, if any.

[51] In *Babich v. Her Majesty*, 2012 FCA 276, para. 14 the Federal Court of Appeal confirmed that a Tax Court judge was able to reject an "ex post facto set-off" sought by the appellant of his shareholder benefit, due to insufficient evidence of the asserted shareholder loan.

[52] The ministerial assumptions of fact were not disproven. The paragraph 7(h) assumption pleaded in the respondent's Reply to (Mr. Alyas') Notice of Appeal states, to repeat, "substantial discrepancies were found in the amounts of \$21,166, \$25,656 and \$38,204 for the 2013, 2014 and 2015 taxation years respectively (as detailed in the attached schedule...)"

[53] Furthermore, the "attached schedule" (schedule V of the net worth audit of Mr. Alyas) identifies the above stated dollar amounts as "ITA 15(1) benefit conferred on shareholder" and "ITA 152(7) assessment not dependent on return or information."

[54] In this case, the appellants have not put forward any or sufficient evidence to prove on a balance of probabilities that the Minister's pleaded assumptions of fact supporting the appealed reassessments of shareholder benefit amounts to Mr. Alyas.

VI. Conclusion:

[55] Each of the two captioned appeals, heard together, will be dismissed, without costs.

Signed this 25th day of March 2026.

“B. Russell”

Russell J.

CITATION: 2026 TCC 61

COURT FILE NO.: 2019-457(IT)I
2019-466(IT)I

STYLE OF CAUSE: 2251102 ONTARIO INC. AND HIS
MAJESTY THE KING

FALAH ALYAS AND HIS MAJESTY
THE KING

PLACE OF HEARING: Windsor, Ontario

DATE OF HEARING: January 16, 2024

REASONS FOR JUDGMENT BY: The Honourable Justice Bruce Russell

DATE OF JUDGMENT: March 25, 2026

APPEARANCES:

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