Docket: 2023-2329(GST)G

BETWEEN:

3278735 NOVA SCOTIA LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on March 30, 2026, at Halifax, Nova Scotia

Before: The Honourable Justice Jenna Clark

Appearances:

Counsel for the Appellant: Melanie Petrunia

Counsel for the Respondent: James Whittier

JUDGMENT

UPON hearing the evidence and submissions of counsel for the Appellant and counsel for the Respondent;

IN ACCORDANCE with the attached Reasons for Judgment, the appeals from the Notice of Assessment dated May 21, 2021 and confirmed by Notice dated July 26, 2023 made under the *Excise Tax Act* (*Act*) for the Appellant's quarterly reporting periods between July 1, 2015 and December 31, 2018 are allowed, and the assessment is referred back to the Minister of National Revenue (Minister) for reconsideration and reassessment on the basis that:

1. additional net Goods and Services Tax / Harmonized Sales Tax is payable pursuant to subsection 298(4) of the Act for the quarterly reporting periods, between July 1, 2015, and March 31, 2017, for the following amounts:

Period Ending	Additional net GST/HST Payable
September 30, 2015	-$6.63
December 31, 2015	$6,829.84
March 31, 2016	$5,209.88
June 30, 2016	$18,398.62
September 30, 2016	$13,923.09
December 31, 2016	$42,010.16
March 31, 2017	$30,716.00

2. penalties imposed by the Minister pursuant to section 285 of the *Act* for all quarterly reporting periods, between September 30, 2015 and December 31, 2018, are vacated; and

3. the parties are to file on or before May 1, 2026, either a statement that they will not seek costs or submissions seeking costs. Those submissions are not to exceed 10 pages. Reply submissions, if any, must be filed by May 12, 2026, and are not to exceed five pages.

Signed this 9th day of April 2026.

"Jenna Clark"

Clark J.

Citation: 2026 TCC 65
Date: 20260409
Docket: 2023-2329(GST)G

BETWEEN:

3278735 NOVA SCOTIA LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Clark J.

I. BACKGROUND

[1] There are two issues in this appeal:

A. Was the Minister of National Revenue (Minister) entitled to reassess the Appellant's quarterly reporting periods, between July 1, 2015, and March 31, 2017, beyond the statutory limitation period pursuant to subsection 298(4) of the *Excise Tax Act (Act)*[1]?

B. Did the Minister correctly assess penalties pursuant to section 285 of the *Act* for 11 quarterly reporting periods between September 30, 2015, and December 31, 2018?[2]

[2] The Appellant, also known as GNF Commercial Investments, was part of a corporate group engaged in various aspects of real estate development. Navid Saberi is the sole shareholder and director of each of the corporations in the group.

[1] *Excise Tax Act*, RSC 1985, c. E-15, as amended (*Act*).
[2] The Minister assessed penalties for quarterly reporting periods ended December 31, 2015, March 31, 2016, June 30, 2016, September 30, 2016, December 31, 2016, March 31, 2017, June 30, 2017, September 30, 2017, December 31, 2017, June 30, 2018, and September 30, 2018.

[3] The Appellant filed quarterly returns for the periods in issue, save for the periods ending on September 30, 2018, and December 31, 2018, wherein it did not file at all. The Minister audited the reporting periods at issue in the appeal and made adjustments including assessing net increase to Goods and Services Tax / Harmonized Sales Tax (GST/HST) collectible in the amount of $41,240.16, net reduction to Input Tax Credits (ITCs) in amount of $141,319.81 and net increase to GST/HST payable of $182,559.97. The Minister assessed penalties pursuant to section 285 of the *Act* in the amount of $50,391.07.

[4] The Respondent called two witnesses, Mr. Saberi and Satbir Dhillon. Mr. Dhillon is an Appeals Officer with the Canada Revenue Agency (CRA).

[5] Mr. Saberi testified that he owned over 20 corporations, including six active at the time of his testimony. His area of expertise is real estate development, including managing commercial leases and developing large scale development projects in Halifax, Nova Scotia.

[6] Mr. Saberi testified that Terra MacMillan, accounting clerk, had worked with his group of companies since 2009, and his accountant Mr. Nelson had worked with him for 30 years. The accounting department was shared with all of Mr. Saberi's corporations.

[7] Mr. Saberi is clearly a successful and sophisticated businessperson. He was also at times evasive, and did not answer direct questions in a straightforward manner. For example, when asked if one of his companies, Glen Arbour Condominiums, was engaged in any transactions with the Appellant, Mr. Saberi said that he was not sure, but then later admitted that the issue in Glen Arbour Condominium's Tax Court appeal was the fair market value of property sold to the Appellant. When Mr. Saberi was asked if Ms. MacMillan had contact with CRA auditors concerning the reporting periods in issue, Mr. Saberi answered that he was unsure. I find this difficult to believe given that Ms. MacMillan sent many documents to the CRA on behalf of the Appellant[3] and that answer was, at best, an indication that Mr. Saberi was uninterested in the appeal.

[8] I found Mr. Dhillon, who was an appeals officer assigned to these matters for a limited period, to be well meaning and candid. However, I had difficulty understanding the relevance of much of his testimony to the issues before me.

[3] Exhibit R1, Tabs 3 and 5.

Mr. Dhillon was not involved in the initial audit, and he did not sign off on the confirmation of the assessment.

[9] Mr. Dhillon was not asked to provide details concerning the adjustments made to the Appellant's GST/HST liability or a detailed explanation of the penalty calculation. I am reminded of the advice given to writers: "show, don't tell". This is good advice for counsel adducing evidence from a witness. Statements of conclusion and general impressions are less probative than an explanation of the foundation for those conclusions and impressions.

[10] Mr. Dhillon testified that the Appellant did not provide adequate documentation in response to audit requests and that the information provided by the Appellant "did not make sense". Mr. Dhillon did not show me what he meant by that or why he reached that conclusion. Mr. Dhillon was not tendered as an expert witness, and I have rejected his testimony where it bled into opinion.

[11] I note that none of the documents put to Mr. Dhillon were put to Mr. Saberi. The contents of many of the documents put to Mr. Dhillon were not proven, and I was left with only Mr. Saberi's evasive testimony, Mr. Dhillon's unclear statements of his conclusions and a string of documents that simply established that the Appellant provided some —but not all— requested information to the CRA. The evidence before me provided me with little insight into the deficiencies of that information.

[12] The parties could not agree as to whether the reassessment was made on the basis of documents before the Court, as asserted by the Appellant, or if there was another set of corrected general ledgers provided by the Appellant to the CRA but not before the Court, as asserted by the Respondent. Neither party was able to provide cogent evidence in support of their position. What the parties did agree on was that the ultimate reassessment was based on corrected ledgers provided to the CRA by the Appellant.

[13] The Respondent referred to a letter dated February 23, 2023[4] as a Notice of Objection, and yet the letter states that it is additional representation concerning the notice of objection. The Respondent relied on this letter, sent by an accounting firm retained by the Appellant, in support of its proposition that the filing errors were due

[4] Exhibit R1, Tab 13.

to significant turnover of accounting staff who did not hold a professional accounting designation.

[14] While I accepted the document for the purposes of establishing what Mr. Dhillon looked at or considered during his review, and I accept that the statement was indeed made, the truth of the content of that statement was not proven. The statement should have been put to Mr. Saberi instead of to Mr. Dhillon. The Respondent cannot avoid putting a document authored on behalf of the Appellant to the Appellant's director and sole shareholder, only to later attempt to adduce it for the truth of its contents simply because it was reviewed by an appeals officer.

[15] In any event, the potential inexperience of the Appellant's accounting staff does not impact my findings. As discussed below, the Appellant is not absolved from showing care when filing returns by relying on accounting staff, whether they are experienced or not. Nor does the inexperience of accounting staff in and of itself establish gross negligence, nor in and of itself absolve a party of gross negligence.

II. LEGAL ANALYSIS

A. Preliminary Issue — Sufficiency of Pleadings

[16] Counsel for the Appellant raised the issue of sufficiency of pleadings, citing *Rail c R*[5] in support of the argument that the Minister's Reply to the Notice of Appeal did not disclose facts relied on at hearing. That case addresses the need to prevent trial by ambush. In this case, the evidence adduced by the Respondent was limited to testimony that came from the Appellant's sole shareholder and director, testimony from the appeals officer, and documents that had been disclosed prior to the hearing. I saw no indication that the Appellant was unaware of the case the Respondent set out to meet.

[17] The Appellant also relied on *Lubega-Matovu v R*[6] in support of its argument that the Reply was fatally deficient. In *Lubega-Matovu,* the Respondent pled no facts in support of assessed penalties. In this case, the Reply to the Notice of Appeal, while sparse, did set out the general facts that the Respondent attempted to prove at the hearing.

[5] Rail c R, 2011 TCC 130 at 21.
[6] *Lubega-Matovu v R*, 2011 FCA 265 at 26.

B. Late Assessment

[18] The language of subsection 298(4) of the *Act* concerning assessment beyond the statutory limitation period is nearly identical to subsection 152(4) of the *Income Tax Act,*[7] and the principles emerging from the jurisprudence are reasonably applied to both provisions. Similarly, the language of subsection 285 of the *Act* involving penalties are nearly identical to subsection 163(2) of the *Income Tax Act*.[8] In considering each provision, I will draw from jurisprudence that considers both the *Income Tax Act* and the *Excise Tax Act* provisions.

[19] My first task is to determine if the Minister is entitled to reassess the Appellant's reporting periods from July 1, 2015, to March 31, 2017, pursuant to subsection 298(4) of the *Act.*

[20] The general rule is that the Minister cannot assess a taxpayer more than four years after either the date the taxpayer was required to file a return or after the return was filed. Subsection 298(4) of the *Act* provides an exception to that statutory limitation period when, *inter alia*, the taxpayer "made a misrepresentation that is attributable to the person's neglect, carelessness or wilful default."

[21] The onus is on the Minister to establish that subsection 298(4) of the *Act* was properly relied on.[9] I must find, on a balance of probabilities, that not only was a misrepresentation made, but also that it was attributable to neglect, carelessness or wilful default.[10]

[22] An incorrect statement made at the time of filing constitutes a misrepresentation.[11] The Appellant admitted that there were errors in its initial filings. Indeed, the reassessment was based on corrected figures provided to the Minister by the Appellant. It is clear to me that the Appellant misrepresented its GST/HST collectible and its ITCs for the period from July 1, 2015 through to March 31, 2017.

[23] My next task is to determine if that misrepresentation was attributable to the Appellant's neglect, carelessness or wilful default. Such a misrepresentation typically involves a failure to make reasonable efforts to comply with the standard

[7] *Income Tax Act*, RSC 1985, c 1 (5th Suppl.).
[8] *Encore Cellular Inc v R*, 2024 TCC 35.
[9] *Chaumont v R*, 2009 TCC 493.
[10] *Deyab v Canada,* 2020 FCA 222.
[11] *Nesbitt v Canada*, 96 DTC 6588.

of care expected of taxpayers.[12] A taxpayer is expected to act as a "wise and prudent person" and the returns must be filed "in a manner that the taxpayer truly believes to be correct."[13]

[24] Mr. Dhillon spoke to a table that he created[14] that listed the GST/HST collectible and ITCs claimed for each quarterly reporting period. The table demonstrated the materiality of the discrepancy between the initial reporting and the reassessed amounts. Mr. Dhillon testified that the difference in reported net tax from the accurate net tax ranged from (4%) to 10,753%.

[25] Mr. Saberi testified that his accounting department was responsible for preparing tax returns. He relied on his accounting department and made sure returns were reviewed, but he did not personally review the returns. He admitted that he did not ask questions about the Appellant's returns, and he was not sure if they were prepared correctly. He also admitted that he was not sure if the general ledgers were properly prepared. He agreed that the initial returns were not correct.

[26] Mr. Saberi admitted that he took no steps to ensure the returns were filed correctly, despite that some of his corporations had faced audit issues.

[27] During his testimony, Mr. Saberi demonstrated a strong understanding of the GST/HST system. He also indicated that he understood ongoing audits of his various companies to be a routine part of his business. He presented the image of a competent businessperson who understood his corporation's tax obligations but was content to leave them in the hands of his accounting staff.

[28] Reliance on accountants does not protect one from a finding of negligence or carelessness, particularly if a taxpayer does not take any steps to confirm the accuracy of returns, or ask any questions of the accountant.[15]

[29] I conclude that the Appellant failed to make reasonable efforts to comply with the standard of care expected of taxpayers. The returns misrepresented the Appellant's GST/HST collectable and its entitlement to ITCs. Those misrepresentations were attributable to neglect and carelessness.

[12] *L Venne v The Queen*, [1984] C.T.C. 223 (FCTD), (*L Venne*).
[13] *Regina Shoppers Mall Ltd v R*, [1991] 1 CTC 297.
[14] Exhibit R1,Tab 14.
[15] *Yadgar v HMK*, 2023 TCC 104 at 21, 22 (*Yadgar*), affirmed 2024 FCA 107.

III. THE APPELLANT DID NOT KNOWINGLY, OR UNDER CIRCUMSTANCES AMOUNT TO GROSS NEGLIGENCE, MAKE A FALSE STATEMENT OR OMISSION IN A RETURN.

[30] Section 285 of the *Act* states,

> Every person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") made in respect of a reporting period or transaction is liable to a penalty of the greater of $250 and 25% of the total of…

[31] While failing to exercise reasonable care is sufficient to reopen a late assessment, a finding of gross negligence to support imposition of penalties involves a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not. It is "akin to burying one's head in the sand".[16]

[32] *Deyab*, cited with approval the decision of this court in *Farm Business Consultants*[17] at paragraph 28,

> … A court must be extremely cautious in sanctioning the imposition of penalties under subsection 163(2). Conduct that warrants reopening a statute-barred year does not automatically justify a penalty and the routine imposition of penalties by the Minister is the be discouraged… moreover, where a penalty is imposed under subsection 163(2) although a civil standard of proof is required if a taxpayers conduct is consistent with two viable and reasonable hypotheses, one justifying the penalty and one not, the benefit of the doubt must be given to the taxpayer and the penalty must be deleted…

[33] My first step in considering if the Minister properly assessed gross negligence penalties pursuant to subsection 285 of the *Act* is to determine if a false statement has been made. It is only then that I proceed to determine if the Appellant made the false statement knowingly or under circumstances amounting to gross negligence. I agree with the Respondent that the Appellant's admission that the initial returns were incorrect is sufficient to establish that a false statement was made.[18]

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[16] *Guindon v Canada*, 2015 SCC 41 at 60 (*Guindon*); *L Venne.*
[17] *Farm Business Consultants*, [1994] 2 CTC 2450 at 27.
[18] Yadgar at 27.

[34] My next step is to determine if that false statement was made knowingly or is attributable to gross negligence. The Respondent asserts that the Appellant was wilfully blind when filing the incorrect returns, such that this Court ought to find the Appellant was grossly negligent. There was no evidence indicating that the Appellant or the accounting department knowingly filed erroneous returns.

[35] The Federal Court of Appeal considered the distinction between wilful blindness and gross negligence in *Wynter v Canada*,[19] stating that a taxpayer is wilfully blind in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make that inquiry because the taxpayer does not want to know, or studiously avoids, the truth. A wilfully blind taxpayer is deliberately ignorant, such that the court may impute knowledge to a taxpayer.

[36] This Court in *Torres v The Queen*[20] set out several factors helpful in considering if a taxpayer was wilfully blind. Those factors include that there was a need or suspicion for inquiry, flashing red lights that indicate a need for inquiry including magnitude of the advantage or omission, blatantness of the false statement, lack of acknowledgment by the tax preparer, unusual requests made by the tax preparer, an unknown tax preparer, incomprehensible explanations, and warnings about the tax preparer. The court can also consider the education and experience of the taxpayer.

[37] The Respondent's position was that prior audits of related companies, including a fruitless criminal investigation, constituted "flashing red lights" such that the Appellant was grossly negligent when not taking care to ensure the accuracy of the GST/HST returns filed for the periods between September 30, 2015 and December 31, 2018.

[38] There was no evidence before me connecting the CRA's abandoned criminal investigations to the Appellant's false statements. Mr. Saberi testified that the criminal investigation matter was related to "a timing issue". He testified that no charges were laid.

[39] The Respondent did not establish that the Appellant was aware of the need to make an inquiry but declined to make it because it studiously avoided the truth. I have no evidence before me to support a finding that the Appellant studiously avoided the truth, rather the evidence is that Mr. Saberi delegated tax matters to his

[19] *Wynter v Canada,* 2017 FCA 195 (*Wynter*).
[20] *Torres v The Queen*, 2013 TCC 380.

accounting department and did not make inquiries to ensure accuracy. Mr. Saberi stated that he trusted his accountants and believed they would deal with the Appellant's filings. While Mr. Saberi ought to have ensured that the filings were correct, I saw no evidence that there were "flashing red lights" in respect of these reporting periods and this Appellant.

[40] I saw no evidence of other examples of "flashing red lights", including warnings, incomprehensible explanations, an unknown tax preparer or that the false statements were blatant. I was given no details at all regarding why or how the GST/HST amounts were under-collected or claim to ITCs were overstated.

[41] The Federal Court of Appeal in *Wynter* stated that a finding of gross negligence requires a higher degree of neglect than a mere failure to take reasonable care. The Supreme Court in *Guidon*, stated that gross negligence penalties "are meant to capture serious conduct, not ordinary negligence or simple mistakes."[21] In order to make a finding of gross negligence, I would need to see evidence establishing that the Appellant made a marked departure from what a reasonable person would do in the Appellant's situation.

[42] The Respondent did not establish that the Appellant made a marked departure when filing incorrect returns. The evidence convinced me that the Appellant was careless, but "merely negligent". The Appellant did make false statements, some of them material. However, I cannot find on the evidence before me that the Appellant's conduct was grossly negligent.

[43] In addition to not being convinced that the Appellant's conduct rose to the level of gross negligence, I have concerns about the veracity of the Minister's computation of penalties. Mr. Dhillon admitted a computational error in the chart he created that illustrated calculation of penalties.[22]

[44] The Minister's burden includes not only proving that false statements were made knowingly or under circumstances amount to gross negligence, but also that the amount of the penalties as assessed are correct. I agree with the statement made in *Hans v R*[23] that the Minister must be able to establish correct computation of penalties. Based on the scant evidence before me, I am not satisfied that the Minister's computation was correct.

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[21] *Wynter*, at para 21.
[22] Exhibit R1, Tab 14.
[23] *Hans v R*, 2003 TCC 576 at 20.

IV. COSTS

[45] The parties are asked to file by May 1, 2026 either cost submissions or a statement that they will not seek costs. Those submissions are not to exceed 10 pages. Reply submissions, if any, must be filed by May 12, 2026 and are not to exceed five pages.

Signed this 9th day of April 2026.

"Jenna Clark"

Clark J.

CITATION:	2026 TCC 65
COURT FILE NO.:	2023-2329(GST)G
STYLE OF CAUSE:	3278735 NOVA SCOTIA LIMITED AND HIS MAJESTY THE KING
PLACE OF HEARING:	Halifax, Nova Scotia
DATE OF HEARING:	March 30, 2026
REASONS FOR JUDGMENT BY:	The Honourable Justice Jenna Clark
DATE OF JUDGMENT:	April 9, 2026

APPEARANCES:

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Counsel for the Respondent:	James Whittier

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