



[2021] 4 F.C.R. D-18

INCOME TAX

ASSESSMENT AND REASSESSMENT

Penalties — Appeal from Tax Court of Canada (T.C.C.) decision (2020 TCC 87) dismissing appellant’s appeal of reassessments of his 2011, 2012 taxation years made following audit of returns for those years — Canada Revenue Agency (CRA) conducted bank deposit analysis, identified unexplained revenues — Reassessments imposed penalties under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 163(2) — Appellant uncertain whether 2011 unreported amounts had quality of income, did not report them — Claimed to have reported net income only for 2012 — T.C.C. concluded that 2011 unreported amounts either commissions for services rendered or entirely unexplained — As to 2012, T.C.C. not persuaded that appellant incurred any expenses beyond those allowed by CRA — T.C.C. concluded that respondent had established that appellant’s tax returns contained false statements or omissions made in circumstances amounting to gross negligence — Appellant arguing T.C.C. erred in applying law with respect to liability for s. 163(2) penalties — Relying on *Deyab v. Canada*, 2020 FCA 222 to further argue that penalties under s. 163(2) may be imposed only when evidence of intentional acting present — Appellant misread *Deyab* — Phrase “tantamount to intentional acting” quoted therein conveying something broader than intentional acting — That phrase encompassing “an indifference as to whether the law is complied with” or wilful blindness — Court cautioned in *Deyab* not to interpret *Lacroix v. Canada*, 2008 FCA 241 as requiring that taxpayer in all circumstances identify source of unreported income, show it is not taxable in order to set aside penalty under s. 163(2) — In *Deyab*, taxpayer’s explanation consistently maintained, consistent with evidence — In contrast, appellant failed to provide viable, reasonable explanation for large amounts of unreported income — Appellant having no other credible evidence consistent with explanations he offered — T.C.C. correctly identified that respondent bore onus of establishing that conditions for s. 163(2) penalty met — Applied relevant principles from case law — Clear appellant made misrepresentation or omission in circumstances amounting to gross negligence — Appeal dismissed.

WOOD V. CANADA (A-219-20, 2022 FCA 60, Monaghan J.A., reasons for judgment dated April 7, 2022, 13 pp.)