

Appeal of **Karlden** Sherpa

The issue on appeal is whether respondent's reconstruction of appellant's income from the sale of narcotics for the period in issue is supported by the evidence presented on appeal.

Prior to November 10, 1983, the Oakland Police Department received information from a confidential informant that appellant was engaged in the sale of heroin and had been for the past three to six months. On November 10, 1983, **an** undercover police officer purchased 300 grams of heroin from appellant for \$54,000. At the time of the purchase, appellant stated that he could supply the officer with 400 grams a week starting the following week.

Appellant was arrested subsequent to that sale and consented **to** a search of his apartment. The search revealed \$8,900 **in** cash, and **"pay and owe"** records which were written in both English and Nepalese. Upon his release from jail on bail, appellant fled the state.

Respondent was advised of the above events and determined that appellant had received unreported income from the illegal sale of narcotics **for the** period January 1, 1983, to the date of his arrest, November 10, 1983. Respondent calculated appellant's income for the period at issue by totaling only those **"pay and owe"** records that were in English and determined that he received \$132,897 in unreported income since at least March 1983, the earliest recorded date on the **"pay and owe"** sheets. Respondent also determined that the collection of the tax on that amount would be jeopardized by delay. An appropriate assessment was issued and appellant filed a petition for reassessment. Appellant failed to respond to any of respondent's requests for further information. Respondent subsequently affirmed its assessment and this appeal followed.

Appellant's sole contention on appeal is **that** there is **no** foundation **for** respondent's conclusion that the records found in appellant's residence constituted evidence of income earned by appellant from the illegal sale of narcotics. In support of his argument, appellant points out that there are no known assets or bank accounts which would support such a high level of income.

Under the California Personal Income Tax Law, a taxpayer is required to state the items of his gross income during the taxable year. (Rev. & Tax. Code, § 18401.) Except as **otherwise provided by law, gross**

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income is defined to include "all income from whatever source derived" (Rev. & Tax. Code, § 17071), and it is well established that any gain from the sale of narcotics constitutes gross income. (Farina v. McMahon, 2 A.F.T.R.2d (P-E) ¶ 58,5246 (1958).) **The existence of unreported** income may be demonstrated by any practical method of proof that is available and it is the taxpayer's burden of proving that a reasonable reconstruction of income **is** erroneous. (Appeal of Marcel C. Robles, Cal. St. Bd. of Equal., June 28, 1979.) Respondent's reconstruction of a taxpayer's income will be considered reasonable if it is based upon the taxpayer's own records concerning the unreported income. (Appeal of Bruce James Wilkins, Cal. St. Bd. of Equal., May 4, 1983; Appeal of James Eugene Ely, Cal. St. Bd. of Equal., Sept. 30, 1980.)

Due to the illegal nature of the sale of narcotics, it is not reasonable **to expect** a drug dealer to keep extensive or completely accurate records of his narcotics sales. (Appeal of Mart Conrad Wende, Cal. St. Bd. of Equal., Mar. 1, 1983.) Often the records are in a code that only the writer understands, or the records reflect just a shadow of the taxpayer's activities. (See Appeal of James Eugene Ely, supra,) Accordingly, if there is some basis to believe the records relate to the taxpayer's illegal activities, respondent is justified in relying on the information in those records to reconstruct the taxpayer's unreported income. (Appeal of Mart Conrad Wende, supra; Appeal of James Eugene Ely, supra.) If such a connection **between** the records and the activity **is** established, it is the burden of the taxpayer to show that the records are somehow inapplicable or inaccurate.. (Appeal of Mart Conrad Wende, supra; Appeal of James Eugene Ely supra.) An unsupported allegation that the records do not reflect unreported income from illegal activities is insufficient to carry **the taxpayer's** burden. (Appeal of Mart Conrad Wende, supra.)

In the present case, the records found in appellant's apartment contain several factors which indicate they were records of drug sales. First, the series of computations on the papers were coupled with notations of **"pay"** and "grams." These are common terms used in describing the amount a buyer pays a drug dealer for his narcotics and how much of a drug he bought or sold. Furthermore, heroin is commonly sold in a powdered form measured **in grams**, as is evidenced by the undercover buy where appellant attempted to sell the police officer **"300 grams"** of heroin. Secondly, we note that many of the records were in Nepalese, and that an effective way of

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concealing records of drug sales is to record them in a relatively obscure language. Finally, appellant has failed to provide any explanation of what the records were recording, if they were not notations of drug sales.

Due to the cryptic nature of the notations, the use of terms associated with the drug trade, and the lack of a credible explanation of what the notations were for if they were not records of drug sales, we conclude that respondent's determination that the writings were records of appellant's drug sales during the period in question is supported by the record and that respondent was justified in relying upon those records in reconstructing appellant's unreported income. (Appeal of Mart Conrad Wende, supra; Appeal of James Eugene Ely, supra.) **Appellant's** unsupported assertions that the notations were not drug records does not carry his burden of proving otherwise. (Appeal of Mart Conrad Wende, supra; Appeal of James Eugene Ely, supra.)

In regard to appellant's final argument that there is 'no proof he had such a high level of unreported income because respondent found no **proof** of how he **disposed** of the income, we reiterate **that** respondent has the authority to reasonably reconstruct a taxpayer's income. (Appeal of Marcel C. Robles, supra.) Whether or not respondent discovers what appellant did with that income after its accumulation is irrelevant to that determination.

Consequently, we find that respondent's reconstruction of appellant's income from the illegal sale of heroin for the period in question is reasonable when scrutinized against **the record** on appeal. Given that appellant has the burden of proving that the reconstruction was erroneous and that he has failed to present **evidence to support his claim, we must conclude that** respondent **properly** reconstructed his income for that period. Accordingly, respondent's action in this matter must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the petition of **Karlden** Sherpa for reassessment of a jeopardy assessment of personal income tax in the amount of \$13,047 for the period January 1, 1983, to November 10, 1983, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of May , **1985**, by the State Board of Equalization, with Board **Members** Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9