



Appeal of Howard Paul Rodson

The issue presented by this appeal is whether respondent properly reconstructed appellant's income for the period at issue.

Between May 26, 1982, and June 3, 1982, the Torrance Police Department received information from two informants that appellant was in possession of quantities of marijuana and cocaine. Based on this and other information, the police obtained a search warrant of appellant's residence which was executed on June 3, 1982. During the search, cocaine and large amounts of cash were discovered, and appellant was arrested.

Respondent was informed of the above-described events and determined that the collection-of tax on 'income appellant received during the first half of 1982 would be jeopardized by delay. Respondent reconstructed appellant's income for that period using the cash expenditures method and issued the appropriate jeopardy assessment. A petition for reassessment was not filed as appellant jumped bail after being released. Subsequently, the assessment became final.

Appellant was rearrested on November 3, 1982, and was found to be holding over \$9,000, which respondent determined to be further unreported income. Respondent issued a second jeopardy assessment based on that assumption. Appellant filed a petition for reassessment concerning the second assessment. During its consideration of the petition, respondent requested further financial information from appellant. On the financial questionnaire, appellant reported as income for the period in question: \$2,000 from self-employment as a carpet cleaner; \$5,000 for unknown work for the Tides Bar-Manhattan Reach and the studio "The Dungeon;" and \$35,000 from driving cars to Florida. On the statement of financial condition returned at the same time, appellant declared \$2,000 in salaries, \$5,000 from his business and profession, and \$33,000 in partnership income. Both forms were signed under penalty of perjury.

After this and other information was received, respondent revised its assessments, decreasing its original assessment while increasing its second assessment. Subsequent to the issuance of the revised assessments, a sentencing hearing stemming from appellant's arrest was held. A probation report was submitted to the court which stated that appellant claimed not to have owned the cocaine found in his apartment. Rather,

Appeal of Edward Paul Rodson

appellant claimed to have been storing the drugs for someone else who was paying him \$2,000 a week. Appellant also stated that he had provided this "service" for the six months prior to his arrest. Appellant further said that he had been working during that six-month period as a repairman at the "The Dungeon" for \$200 a week plus room.

Following his sentencing, appellant met with respondent at an informal hearing where he submitted yet another set of figures regarding his income for the period at issue. Following that meeting, respondent revised its income reconstruction to include as appellant's income: \$52,000 for holding cocaine (\$2,000 a week for 26 weeks); \$35,000 for driving cars to Florida; \$5,200 for work at "The Dungeon" (\$200 a week for 26 weeks); and \$2,000 for carpet cleaning work. Respondent withdrew its previous assessments and issued the present assessment. On February 1, 1984, appellant filed a tax return for 1982, but included no W-2 forms or any other documentation to support his income figures on the form. Prior to the finalization of respondent's latest assessment, this appeal was filed.

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 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-H) ¶ 58,5246 (1958).)

Each taxpayer is required to maintain such accounting records as will enable him to file an accurate return, and in the absence of such records, the taxing agency is authorized to compute a taxpayer's income by whatever method will, in its judgment, clearly reflect income. (Rev. & Tax. Code, § 17561 subd. (b); I.R.C. § 446(b).) Where a taxpayer fails to maintain the proper records, an approximation of net income is justified even if the calculation is not exact. (Appeal of Siroos Ghazali, Cal. St. Bd. of Equal., Apr. 9, 1985.) Furthermore, 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.) Unsupported statements that respondent's

Appeal of Howard Paul Rodson

assessment is erroneous do not satisfy appellant's burden of proof. (Appeal of Dennis and Cynthia Arnold, Cal. St. Bd. of Equal., May 6, 1986.)

Appellant contends that respondent erroneously used the highest income figures in each of the four categories of earnings and that a more accurate statement of income is represented by the 1982 tax return he filed. Appellant argues that the statements he made prior to filing the return are inaccurate as they were made when he was unable to properly compute his income. **Furthermore, some** of the income attributed to appellant should not have been included as income since it represented partnership earnings, not individual income. Appellant does not present us with evidence of his position, but **relies** on the argument that respondent has not met its **burden regarding the reconstruction of appellant's** income;

Appellant has misinterpreted respondent's burden. As stated above, as long as a reconstruction is based on facts rather than **on** conjecture, respondent has satisfied its burden. These **"facts"** consist of "credible evidence **in the record which**, if accepted as true, would induce a **reasonable** belief that the amount of tax **assessed** against the taxpayer is due and owing." (Appeal of Siroos Ghazali, supra.) An admission by a taxpayer regarding his income represents such credible evidence so as to satisfy respondent's burden. (Appeal of Dennis and Cynthia Arnold, supra; Appeal of Alan E. French, Cal. St. Bd. of Equal., Mar. 4, 1986; Appeal of Hee Yang Juhanq, Cal. St. Bd. of Equal., Nov. 4, 1985.) **The burden then** shifts to the taxpayer to **prove**, by credible evidence, that the admission, for whatever reason, is not an appropriate foundation upon which to base a **reconstruction of the taxpayer's income.** (Appeal of Dennis and Cynthia Arnold, supra; Appeal of Alan E. French, supra; Appeal of Hee Yang Juhanq, supra.)

None of the figures **respondent** used were derived from its own estimations; they were based solely upon **appellant's** own statements of income. The fact that respondent chose the highest figure of income in each of the four admitted categories of earnings does not demonstrate arbitrariness on its part. Appellant admitted to each of those amounts. **If** the amounts were incorrect or inaccurate, appellant had ample opportunity to provide substantive evidence to correct the income estimation and **prove the existence of a partnership.** **This he did not do.** Appellant **simply relied** on his filed

Appeal of Howard Paul Rodson

tax return as a "true" **statement of income**. We do not find that document convincing. **There is nothing magical** about the fact that appellant wrote his story on a return. Without any documentation **substantiating** the claimed income, the tax return is simply one of many stories submitted by appellant as to how much he earned during the period in question.

'Consequently, appellant has failed to supply us with evidence that his present statement of income is correct. Accordingly, respondent's action in **this** matter will be sustained.

