



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PARITEM AND JANIE POONIAN)

Appearances:

For Appellants: Richard H. Foster
Attorney at Law

John V. Lewis
Attorney at Law

For Respondent: Richard C. Creeggan
Counsel

O P I N I O N

This appeal is made pursuant to section 1859⁴ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Paritem and Janie Poonian against proposed assessments of additional personal income tax in the amounts of \$813.12, \$1,520.25, \$578.42, and \$68.48 for the years 1960, 1961, 1962, and 1965, respectively.

The questions presented are whether certain income was properly reallocated from appellant Paritem Poonian's mother Raj Kor to appellants and, if so, whether tax paid by the mother upon that income may be 'offset by the taxpayers against the proposed additional assessments.

During the years 1960, 1961, and 1962 Paritem Poonian and his spouse engaged in farming in California. On both their federal and state income tax returns for those respective years, appellants reported only a portion of the total income or losses derived from the farming operations. The remainder of the tax upon the

Appeal of Paritcm and Janie Poonian

farm income was paid by Raj Kor. Her alleged entitlement to a share of the farm proceeds was based upon the claim that she had an interest in and helped manage certain portions of the farming operations. Similarly, income from various bank accounts was divided between appellants and Raj Kor for the years 1960, 1961, and 1962, with each paying taxes on their respective shares.

In its audit of federal returns submitted by Raj Kor and appellants, the Internal Revenue Service reallocated to Paritem Foonian and his spouse the farm income which had been reported by the mother during the years 1960, 1961, and 1962. In addition, the Service reallocated to appellants a substantial portion of the interest income included in Raj Kor's returns for those same years.

These adjustments resulted in federal tax underpayments by appellants for the years 1961 and 1962 and in overpayments of federal tax by Raj Kor for each of the years 1960 through 1962. A large net operating loss carryback from 1963 resulted in no tax being due, despite the federal income reallocation, on appellants' 1960 federal return. Appellants ultimately filed a petition in the United States Tax Court for redetermination of those deficiencies. That case was settled by stipulated agreement.

Respondent adopted the federal adjustments used for purposes of the Tax Court stipulated settlement and made similar reallocations of income from Raj Kor to appellants for the years 1960, 1961, and 1962. Appellants' income averaging schedule for 1965 was also revised to allow for the resulting increases in taxable income for the base period years 1961 and 1962. As a result of these revisions, additional taxes were proposed against appellants for the years 1960, 1961, 1962, and 1965.

Appellants protested respondent's determinations on May 5, 1969. Respondent's denial of the protest gave rise to this appeal. As a basis for their appeal, taxpayers state, initially, that the original allocation was proper, and that they agreed to the reallocation only because the federal government allowed them credit for Raj Kor's overpayments.

In the alternative, appellants argue that even if the federal reallocation was correct, they are entitled to offset as credit against the proposed tax deficiencies

Appeal of Paritem and Janie Poonian

for 1960 through 1962, tax overpayments made by Raj Kor in those same years which resulted from the income reallocations. Appellants also assert that in any event it would be unconscionable for the Franchise Tax Board to receive a "windfall" in the form of a double payment of taxes for the same income.

Pursuant to section 19053.9 of the Revenue and Taxation Code, respondent allowed Raj Kor's tax overpayment in the amount of \$346.92 for the year 1962 as an offset against the proposed deficiency assessed against the appellants for that year, leaving a balance due of \$578.42. Respondent determined, however, that section 19053.9 did not allow offsets for 1960 and 1961. Section 19053.9 provides:

Notwithstanding any statute of limitations provided in this part, any overpayment due a taxpayer for any year which results from a transfer of items of income or deductions or both to or from another year for the same taxpayer, or for the same year for a related taxpayer described in Section 1.8691 .1, shall be allowed as an offset in computing any deficiency in tax for any other year resulting from the transfer of such income or deductions or both,...

The offset provided herein, however, shall not be allowed after the expiration of seven years from the due date of the return on which the overpayment is determined . (Emphasis added.)

Respondent contends that appellants never claimed any offset or credit for Raj Kor's overpayments against their own personal tax liability until their May 5, 1969, protest against respondent 's proposed assessments. Raj Kor's returns for 1960 and 1961 were due on April 15 of 1961 and 1962, respectively, and any claim therefor filed on May 5, 1969, would be barred by the limitation contained in the final paragraph of the statute.

We find that the action taken by the Franchise Tax Board in the instant case was appropriate. Respondent 's determination of deficiencies based upon a federal audit report is presumed to be correct, and the burden is on the taxpayer to show that it is erroneous. (Appeal of Horace H. and Mildred E. Hubbard, Cal. St. Bd. of Equal., Dec. 13, 1961; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal.,

Appeal of Paritem and Janie Poonian

Feb. 17, 1959; see also Appeal of Frank and Laura J. Randall, Cal. St. Bd. of Equal., Dec. 11, 1963.)

The evidence submitted by appellants to meet this burden is largely unsupported and contradictory. In its opening brief, for example, Mr. Lewis, one of appellants' representatives, asserted that during the period in question Raj Kor "actually and physically worked the property." At the hearing, however, he testified that from 1960 until her death Raj Kor was very ill and was physically incapacitated. Although the witness testified that the alleged offsets were handled in a "lump sum" transaction and were simply figured into the total tax figure, when he was shown on cross-examination a copy of the final Tax Court settlement of the appellants' federal income tax for the years 1960-1963, he could not point out where any offsets had been given. Mr. Lewis did assert that a letter introduced at the hearing shows appellants were given credit for Raj Kor's overpayments. We find, however, that the writing does nothing more than caution the attorneys for Raj Kor's estate that protective claims should be filed to protect the estate's right to a refund. Nothing in this letter indicates that appellants received credit for the overassessments on their federal 1961-1963 deficiencies.

We are not convinced that the federal reallocation was erroneous. Raj Kor's physical condition during the years in question makes it unlikely that she could have played an active role in the management of the farm. In absence of explanatory 'evidence appellants' action in stipulating to the proposed federal assessment indicates that they deemed the federal audit to have been accurate. This inference has not been dispelled by the unsupported assertion that offsets were given in the federal settlement.

The only other argument offered by appellants is their assertion that it is unconscionable that the State Franchise Tax Board should receive a windfall in the form of a double payment. The United States Supreme Court in Rothensies v. Electric Storage Battery Co. (1946) 329 U.S. 296 [91 L. Ed 296], addressed itself to a similar argument by stating:

As statutes of limitation are applied in the field of taxation, the taxpayer sometimes gets advantages and at other times the Government gets them. Both hardships to the taxpayers and losses to the revenues may be pointed out. (329 U.S. 296, 302.)

Appeal of Paritem and Janie Poonian

Appellants' assertions amount to nothing more than an attack upon the statute of limitations. (Appeal of James T. King, Cal. St. Bd. of Equal., Oct. 27, 1964.)

Appellants have failed to produce sufficient evidence to dispell the presumption of the accuracy of the Franchise Tax Board's determinations. Therefore, respondent's action in this matter must be sustained.

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 on the protest of Paritem and Janie Poonian against proposed assessments of additional personal income tax in the amounts of \$813.12, \$1,520.25, \$578.42, and \$68.48 for the years 1960, 1961, 1962, and 1965, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of January, 1972, by the State Board of Equalization.

John W. Lynch, Chairman
Leo T. Allen, Member
Richard H. ..., Member
..., Member
William B. ..., Member

ATTEST: W. W. ..., Secretary