

Appeal of Julius A. and Lydia A. Cruz

The only issue presented by this appeal is whether appellants are entitled to a deduction for the theft loss of a diamond.

Appellants report that while Mrs. Cruz was on vacation in Las Vegas, she returned to her hotel room on the evening of February 17, 1979, removed her diamond ring, placed it on a dresser, and retired. When she awoke in the morning, the ring was still on the dresser, but the diamond was gone from its setting. Mrs. Cruz reported the loss as a burglary to the Las Vegas police, who filed a burglary report which recorded that the diamond was the only item missing, that neither Mrs. Cruz' purse nor any other valuables had been disturbed, that there were no signs of forced entry to the room, and nothing was out of place. The report also noted that one of the ring's prongs was bent at an odd angle, which might have allowed the diamond to fall out of the ring. Appellants declared a theft loss of \$20,000 on their joint California personal income tax return, and took a \$19,900 deduction (the \$20,000 loss, less the \$100 exclusion required by section 17206(c)(3) of the Revenue and Taxation Code).

It is well settled that income tax deductions are a matter of legislative grace, and the burden is on the taxpayers to show by competent evidence that they are entitled to any deduction claimed. (Deputy v. du Pont, 308 U.S. 488 [84 L.Ed. 416] (1940); New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).)

Here, the taxpayers must first prove that a theft occurred; a mere mysterious disappearance of the property is not enough. (Charlotte Jacobson, 73 T.C. 610 (1979).) We recognize that Mrs. Cruz is convinced the diamond was stolen. But the taxpayers' beliefs, no matter how sincere, do not constitute sufficient proof of theft. (Mary I. Manahan, ¶ 50,294 P-H Memo. T.C. (1950).) To conclude the diamond was stolen, one must assume that the thief made a non-forcible entry to Mrs. Cruz' hotel room while she slept. Then instead of pocketing the whole ring, the thief pried the diamond from its setting in the ring and returned the ring to the dresser. He took no other valuables nor made any apparent search for additional valuables, but simply left with only the diamond.

The other conclusion from the evidence, and the one made by the police officer who examined the ring

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and the room was that at some time before Mrs. Cruz discovered the diamond was missing, one prong of the ring's setting became bent, and the diamond simply dropped from the loosened setting.

We do not know what actually happened to the diamond, but it seems to us that the diamond was more likely lost than stolen. Accordingly, we conclude that appellants have not sustained their burden of proving the diamond theft, and **respondent** properly disallowed the claimed theft loss deduction.

The above conclusion is dispositive of this appeal and, under the circumstances, we do not have to evaluate the adequacy of the evidence submitted in support of the amount of the claimed loss.

For the reasons stated, we conclude that 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 DE-CREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Julius A. and Lydia A. Cruz against a proposed assessment of additional personal income tax in the amount of **\$2,071.46** for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this **23th** day of July , 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9