

No. 38424

1951  
Oct. 17  
Oct. 23

BETWEEN:

JOSEPH PHILLIPONI, Jr.....APPELLANT;

AND

MINISTER OF NATIONAL REVENUE. RESPONDENT.

*Revenue—Income—Income tax—Income War Tax Act, R.S.C. 1927, c. 97—  
Onus on appellant to satisfy Court that increase in his net worth over  
and above income reported was due to betting activities as alleged  
by him—Failure to discharge onus—Appeal dismissed.*

*Held:* That since the appellant failed to satisfy the Court that the increase  
in his net worth over and above the income reported was, as alleged  
by him, due to his betting activities, his appeal from the judgment  
of the Income Tax Appeal Board must be dismissed.

APPEAL from judgment of Income Tax Appeal Board.

The appeal was heard before the Honourable Mr. Justice  
Sidney Smith, Deputy Judge of the Court, at Vancouver.

A. S. Gregory for appellant.

L. St. M. Dumoulin and F. J. Cross for respondent.

The facts and questions of law raised are stated in the  
reasons for judgment and in the reasons for judgment of  
the Income Tax Appeal Board.

SIDNEY SMITH D.J. now (October 23, 1951) delivered the  
following judgment:

The appellant appeals from a decision of the Income Tax  
Appeal Board dismissing his appeal from the Minister of  
National Revenue on assessments for 1946 and 1947 income  
tax made under section 47 of the Income War Tax Act.

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The onus rests upon appellant. He has failed to satisfy me, on the evidence now adduced, that the increase in his net worth over and above the income he reported was, as alleged, due to betting activities. I felt I was not being told the whole story.

Sidney  
Smith, D.J.

I respectfully adopt the concluding passage in the judgment of the Appeal Board in the present case. (1950) 2 Tax A.B.C. 279 at p. 283. It is as follows:

However, there is still a stronger point which leads me to dismiss the appeal. I have said in other decisions, and I repeat, that I do not consider that an appellant appealing an assessment by the Minister under section 47 can meet the onus that is upon him by a general statement, unsupported by other acceptable evidence, that the increase in his net worth over and above the income reported is due to betting activities. Again a general statement to the effect that he thought he averaged a net gain of \$10,000 a year in these activities is not in my opinion sufficient to meet the onus referred to. The Board has met such a plea on several occasions and it would appear to me to open wide the doors to tax evasion if such an unsupported statement were accepted as meeting and overriding the presumption of validity attributed to an assessment by the Minister.

The appeal is dismissed with costs.

*Judgment accordingly.*