June .... Brisbane

M A R T I N.

V.

FEDERAL COMMISSIONER OF TAXATION.

REASONS FOR JUDGMENT

CORAM:

WEBB J.

DELIVERED.. Sydney
29.7.52

M A R T I N.

v.

FEDERAL COMMISSIONER OF TAXATION. (THREE CASES)

JUDGMENT. TERR J.

MARTIN.

v.

FEDERAL COMMISSIONER OF TAXATION. (THREE APPEALS).

JUDGMENT. WEBB J.

These are appeals from assessments of income tax in respect of each of the income years ended 30th June 1944, 1945 and 1946. The same questions arise on each appeal, namely (1) whether the income in question was derived from winning bets on race-horses; and, if so, (2) whether it was the result of carrying on the business of racing or betting or both.

The appellant taxpayer had been successively a carpenter, works foreman and a cafe proprietor before the income years in question; but during the whole of the first income year and for nine months of the second year he was a hotel-keeper at Ipswich and then became a farmer near Brisbane and later near Toowoomba. He sold his cafe for about £1300 in March 1943 and a few months later bought the hotel for £1400. The balance of his capital was then about £1000.

In each of the three income years he included in his returns certain sums as being the proceeds of winning bets, not however as assessable income, but as capital receipts. For the first two years the respondent Commissioner appears to have accepted these returns as being correct, as he assessed on the basis of the returns. But after learning of a conviction of the taxpayer for the offence of selling wine for more than the price fixed by law, he decided to amend the assessments for the first two

years by treating the alleged proceeds from betting as assessable income. In one year the taxpayer won £925 as prize money for horse-races; but this prize money does not appear to have been treated by the Commissioner as assessable income. This may suggest that the Commissioner regarded these alleged betting proceeds as having really been derived from the sale of liquor.

The betting wins claimed by the taxpayer totalled £8928 for the three years in question, being £2398, £3675 and £1864 for the years ended 30th June 1944, 1945 and 1946 respectively. During those years the taxpayer claimed to have made 602 bets, including 275 winning bets. He said that he had no betting transactions between 18th August 1943 and 9th February 1944; but he claimed to have won at 23 race meetings out of 29, and to have won 41 bets out of 77, between 9th February and 30th June 1944. He also claimed to have won at 35 out of 55 race meetings, and to have won 123 bets out of 265, during the year ended 30th June 1945; and to have won at 24 out of 44 race meetings, and to have made 111 winning bets out of 268, for the year ended 30th June 1946. He further claimed that money staked by him during the three income years ranged from £4687 to £10352.

During the year 1944 and thereafter the taxpayer purchased several race-horses. One called "Nitram" was bought for £892 and won six races. Another, "Halo Girl" was bought for £100 and won three races. She was bought for breeding purposes also. Three other race-horses were bought for prices not stated. One, "Staffen", won five races, and each of the other two won a race. The income tax return for one year disclosed £950 prize money.

The taxpayer did not keep racing stables; but he employed several trainers, from whom he obtained information for betting purposes. He also employed a man

to make bets for him, so that he might get longer odds.

From one bookmaker, Elborne, the taxpayer won £1000 in two bets on "Witram", one in November 1945 and the other in January 1946. Elborne was called as a witness by the taxpayer and produced his betting book showing that two such bets were made; but to find that taxpayer was the person who made those bets I have to accept Elborne's and the taxpayer's evidence as to that, and I do so because no suggestion was made that Elborne was not telling the truth. The taxpayer called another bookmaker, Creighton, who said he had made bets with him, but did not say that any bet was won by the taxpayer. At the time when the bets were made with Elborne and Creighton the taxpayer was a farmer.

In January 1946 the taxpayer paid £157 for the service of mares with a view to breeding "a horse capable of carrying my colours", as he put it.

The books of account kept by the taxpayer, first as a hotel-keeper and later as a farmer, were written up by one, Michel, who a registered tax agent. Michel was called by the taxpayer and said that the books of account were written up from information supplied by the taxpayer. The tickets for winning bets would have been handed back to the bookmakers in return for the amounts won. As to winning bets then Michel had to rely on what the taxpayer told him. Taxpayer said he recorded all his bets in race books; but that those books were burnt from time to time.

If the taxpayer's betting and racing operations were as extensive as he claimed, then I think he carried on the business of betting on race-horses during the first income year in question and the business of horse racing and betting on horse races during the remaining two years. I base this view mainly on the considerable amount of time

spent by him on racing and betting operations, the very large proportion of his assets and income applied to them, and the systematic methods employed by him, which were, I think, really directed more to making profit than deriving pleasure. The taxpayer's hotel was a small one as the price he paid for it suggests. His wine quota was only £7 a month. He claims he made a loss on the farm of over £500 in the last of the three income years. It is not always easy to conclude that an individual carries on the business of racing or betting when at the same time he has another business which ordinarily would be a full-time occupation. On the one hand it might well be that a man of considerable means could give as much time to racing and betting as the taxpayer did, without being properly found to be carrying on the business of racing or betting. On the other hand, while it is true that in some peculiar circumstances a man might indulge in racing or betting even beyond his means merely for pleasure, it is more likely to be for profit where his betting or racing transactions are so heavy as to be out of proportion to his assets or income and are systematically conducted, as in this case. However, there is no single factor or group of factors that points to a betting or racing business in any case in which it appears. Many factors might be common to the activities of two individuals, and yet, because of the presence of other factors, a different conclusion might properly be reached in respect of those persons by the same court. The test is both subjective and objective: it is made by regarding the nature and extent of the activities under review, as well as the purpose of the individual engaging in them, and, as counsel for the taxpayer put it, the determination is eventually based on the large or general impression gained.

So far I have assumed that the taxpayer was

as busy and as successful on the race-courses as he claimed. But he impressed me unfavourably during his cross-examination, more particularly on the nature of the evidence he gave at his trial for selling wine above the fixed price. Because of this, and in the face of certain entries in his books of account, and for other reasons hereafter appearing, I am not prepared to accept his evidence as to the extent of his purchases and sales of liquor. I think it is more likely than not that much of his income which he attributed to betting wins was the proceeds of sales of liquor beyond his quotas. He said he purchased from one, Boroneo, "one big cask of wine" containing about 60 gallons for about £100. This was outside his quota for wine. I am satisfied that he made that purchase on the 19th October 1943, as his books show. But his books also show that about two months after paying this £100 i.e. on the 18th December 1943, he paid Boroneo a deposit of £12.10.0 on "casks". On having his attention drawn to this latter entry he said that he might have been lax in paying Boroneo's account. Michel could throw no further light on the matter, beyond suggesting that £12.10.0 might have been a payment for the "casks". Again the taxpayer did not put the proceeds of his extra-quota sales through the cash register, and gave no satisfactory explanation why he did not do so. Further, he said he put receipts from accomodation in the hotel through the cash register; but that he did not keep a separate account of the receipts from accomodation because the amounts were small. However during a substantial period he had many american soldiers staying at the hotel at week ends and charged 8/- to 10/- for bed and breakfast.

As I find that the taxpayer did not make a full and true disclosure of all the material facts necessary for his assessment, because he did not state that he was

carrying on the business of racing or betting, or state facts from which that would have appeared, I hold that the Commissioner was at liberty to amend the assessments. See S. 170 (2)(b) of the Income Tax Assessment Act 1936-1942. It is not material that the assessments were made because the Commissioner may have thought that the money alleged to have been won at betting was really the proceeds of liquor sales. It was sufficient that there was in fact not such a full and true disclosure as aforesaid.

Then as regards all three assessments the burden was on the taxpayer to prove that they were excessive. See S. 190 (b) of the Income Tax Assessment Act 1936 - 1942. This burden he has failed to discharge in respect of any of the three income years.

The Commissioner imposed additional tax in accordance with his authority so to do, under S.226, and I see no ground for interfering with this action, or for making any definite recommendation to him in relation to such additional tax, as submitted by counsel for the appellant taxpayer. The Commissioner might have felt convinced, as was probably the case, that some of the income claimed to have been won at betting was really the proceeds of sales of liquor, and so have been reluctant to remit any part of the additional tax in respect of that income. However, he might well see fit to forego additional tax as to the balance of such income. The whole of such income is taxable, as I have found; but for the purpose of the additional tax, the Commissioner is at liberty to make his own findings as to how much income was from liquor sales, and how much from betting. The taxpayer did win £1000 from Elborne and the Commissioner might see fit to remit additional tax attributable to this £1000.

The appeals are dismissed and the assessments confirmed. The appellant taxpayer will pay the Commissioner his costs of the appeals.