

## INCOME TAX

### ASSESSMENT AND REASSESSMENT

Appeal from Tax Court of Canada (T.C.C.) decision (2015 TCC 133) upholding net worth assessments made under Income Tax Act, R.S.C., 1985 (5th Supp.), c. 1 — Appellant, married full-time student, reporting income of \$3 857, \$1 807 for 2003, 2004 taxation years respectively — Canada Revenue Agency (CRA) undertaking net worth analysis, concluding appellant failing to report over \$150 000 of earned income during tax years at issue — Minister of National Revenue (Minister) reassessing on this basis — T.C.C. rejecting evidence that appellant receiving \$90 000 loan from father during relevant period — Whether T.C.C. making palpable, overriding error in rejecting evidence — Per Woods J.A.: T.C.C. concluding evidence not sufficiently reliable to substantiate loans — Open for T.C.C. to conclude as such — T.C.C.'s conclusion not absurd — Reasons within standards established by case law — Appeal dismissed — Per Webb J.A. (concurring): Appellant raising issue of whether only required to raise prima facie case in appeal before T.C.C.; whether requirement would be satisfied on standard less than balance of probabilities — In tax appeals, focus generally not on facts as alleged by taxpayer but on assumptions of fact made by Minister — Here, T.C.C. finding that appellant could “demolish” Minister’s assumptions by presenting prima facie case; if succeeding, Minister then having to prove, on balance of probabilities, validity of assumptions of unreported income — History of references to taxpayers raising “prima facie case”, “demolishing” facts examined herein — Taxpayer having onus of proving, on balance of probabilities, any facts in dispute: such facts as alleged in notice of appeal; that such facts as assumed by Minister in reassessing taxpayer not true — T.C.C. should, in each case, only evaluate evidence once, then determine whether taxpayer satisfying stated onus — In all cases before T.C.C., standard of proof should be proof on balance of probabilities — Logical that only one party would have burden of proof regarding particular fact — Judge should not, before all evidence has been presented, determine whether taxpayer has established, on balance of probabilities, that particular fact incorrect — Should scrutinize all relevant evidence, then determine whether taxpayer establishing that particular fact, on balance of probabilities, not as assumed by Minister — Illogical for judge to then make second determination of whether Crown, with respect to same fact, has proven that assumption of fact correct — Case law suggesting that taxpayer required to do more than just make out prima facie case on lower standard than balance of probabilities — Taxpayer having to prove, on balance of probabilities, that particular fact assumed by Minister is wrong — In Informal Procedure appeal, taxpayer’s burden of proof not reduced simply because taxpayer not obligated to disclose in notice of appeal material facts on which taxpayer relying in filing tax return or in appeal before T.C.C. — Taxpayer having to prove, on balance of probabilities, any facts alleged in notice of appeal that Crown denying — Here, onus on appellant to establish, on balance of probabilities, that he had received \$90,000 loan from father — Since appellant failing to do so, appeal properly dismissed by T.C.C.

SARMADI V. CANADA (A-309-15, 2017 FCA 131, Woods, Webb and Stratas JJ.A., judgment dated June 21, 2017, 29 pp.)