REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SILAGO TIMBER CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3470

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - x

2/28/89

D E C I S I O N

This case is about the assessments against petitioner for deficiency business and income taxes in 1975.

Petitioner, a domestic corporation, engaged in acquiring, holding, leasing, purchasing or otherwise operates timber and/or forest concession was assessed by respondent Commissioner of Internal Revenue under letter of demand and assessment notice dated February 16, 1981 for percentage tax liability for the year 1975, computed as follows:

3% tax due per investigation	P20,232.00
25% surcharge	5,058.00
	P25,290.00
14% int. fr. 1-20-76 to 7-31-80	16,038.91
20% int. fr. 8-01-80 to 2-27-81	2,889.29
TOTAL AMOUNT DUE & COLLECTIBLE	P44,218.20

Likewise, under letter of demand and assessment notice dated February 27, 1981 for deficiency income tax for the same year, to wit:

Net loss per return		(P 9,309.53)
Add: Unallowable deductions		
1. Amortization of improvements	P100,000.00	
2. Parts and supplies capitalized	90,668.88	P190,668.88
Net income per investigation		181,359.33
Tax due thereon		53,476.00
Add:		
14% int. fr. 4-16-76 to 4-16-79		22,459.92
Compromise for non-compliance of withholding tax on wages		100.00
TOTAL TAX DUE AND COLLECTIBLE		P76,035.92

Petitioner protested the said assessments on April 16, 1981 but was denied by the respondent Commissioner of Internal Revenue in his letter dated April 15, 1982.

Hence this petition for review.

It may be noted that the proceeding of the case moved at idling speed having been reset for thirteen (13) times by the petitioner with the coy acquiescence of the respondent only to have the same submitted for decision on the basis of the BIR records and pleadings.

Be that as it may, the case presents for our determination the validity of the deficiency tax assessments which petitioner considers to have no legal nor factual bases, to wit:

1) Percentage tax for P44,218.20, inclusive of interest and surcharge on the lease of personal properties.

Petitioner avers that there was "no collection or gross receipts from the alleged activities of lease of personal properties" upon which to base the tax imposed under Section 191 of the Tax Code.

The report of investigation however indicates that petitioner derived rental income from its lease of machineries and equipment to an affiliate, Velore Mining Corporation, in the sum of P674,400.00 for the year in question, but failed to file a return and pay the corresponding percentage tax due thereon pursuant to Sections 183(a) and 191, penalized under Section 207, all of the Tax Code (now Sections 193(a), 205 and 221), as amended. The assessment drawn by the respondent Commissioner comports with the presumption of verity and the petitioner has the burden of proving it wrong. It failed. Brought to bear upon the circumstances obtaining there appears no occasion to further speculate when and where the chips must fall, so to speak. We therefore feel compelled to affirm the import and force of such assessment based on the report of findings which may not be suffered to petrify in futility.

2) Deficiency income tax in the amount of P76,035.92, inclusive of interest.

The question for determination is whether petitioner is entitled to deduct from its gross income (1) P100,000.00 as amortization for development and improvements of the roads in the lumber concession, and (2) P100,743.20 expenses for parts and supplies incurred in the ordinary course of business.

In disallowing the claimed deduction, respondent considers the first, "Improvements on grounds of which the taxpayer is a lessee is held to be a capital investment and not deductible as business expense, hence, disallowed." Apparently respondent's position appears hewed close to the rule that an expenditure for capital improvement should be recovered through depreciation charges and is therefore not deductible as an ordinary and necessary business expense or as a loss.

Respondent takes issue with the second "No deduction from gross income may be made for any amount expended in restoring property or making good the exhaustion for which an allowance for depreciation has been made." Thus, the allowance of only P10,074.32 leaving the amount of P90,668.32 capitalized and therefore disallowed.

The respondent Commissioner simply resorted to that standard in assessing the petitioner's income and found that the payments in controversy came closer to capital outlays than to ordinary and necessary expenses in the operation of a business. His findings have the support of a presumption of correctness and the petitioner bears the burden of proving otherwise. And, nothing in the records shows as would to permit Us to give that extension to what petitioner claims as ordinary and necessary expenses.

The de .ciency income tax assessment must be confirmed.

Suffice it therefore, both the circumstances obtaining and the relevant legal standards compel the conclusion that petitioner failed to prove entitlement to a favorable determination for the desired relief.

WHEREFORE, petition is dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, February 28, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals