REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FELIX MONTENEGRO, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 695

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal interposed by petitioner from a decision of respondent finding the former liable for a deficiency income tax in the amount of ₱2,179.00 for the fiscal year ending June 30, 1953.

Petitioner is a domestic corporation duly organized under the laws of the Philippines, with principal place of business at Bais, Negros Oriental. On October 28, 1953, petitioner filed its income tax return for the fiscal year ending June 30, 1953, reflecting therein a net income of ₱70,653.29, on which the amount of ₱14,131.65 was paid as income tax.

After an investigation, the Provincial Revenue Officer of Negros Oriental issued assessment No. 36-1-AC-53, dated October 28, 1958 and received by petitioner on October 28, 1958, together with a notice and closing agreement, for deficiency income tax in the amount of ₱2,179.00. Petitioner protested the aforesaid assessment in its letter dated November 4, 1958 and received by respondent on November 18, 1958, on the

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ground that the requirements of Sec. 7 of the Internal Revenue Manual were not complied with in the making of the questioned assessment. In a letter of respondent dated April 16, 1959 and received by petitioner on April 27, 1959, the former denied the protest.

Not satisfied with the aforesaid denial, petitioner's counsel wrote a letter, dated April 30, 1959 and received by respondent on the same date, requesting again a reconsideration for the reasons that: "(a) the investigation and verification procedures taken by the internal revenue officers of the 1953 income tax return of the taxpayer were in gross violation of the pertinent law, and the rules and regulations issued by the Commissioner (then Collector) of Internal Revenue and approved by the Secretary of Finance; (b) the items disallowed by the investigating examiner are deductible under section 30, and allied provisions, of the National Internal Revenue Code; and (c) the assessment of alleged 1953 deficiency income tax against our client is barred by prescription." This request was denied by respondent in his letter dated August 26, 1959 and received by petitioner on September 7, 1959. On September 8, 1959, petitioner interposed this appeal to this Court.

The issues to be resolved are as follows:

(1) Whether or not this Court has jurisdiction to entertain the instant appeal;

(2) Whether or not the right of the respondent to assess the tax in this case has already prescribed;

(3) Whether or not the assessment by respondent is null and void because of defects in procedure; and

(4) Whether or not the disallowance of the items claimed by petitioner from its 1953 income tax return is justified.

The issue of jurisdiction was raised by respondent only in his memorandum submitted to this Court. Since this issue may be raised at any stage of the proceeding, we must therefore resolve it.

It should be noted that the assessment dated October 24, 1958 was received by petitioner on October 28, 1958. The aforesaid assessment was protested by it in a letter dated November 4, 1958. This protest was denied by respondent in his letter dated April 16, 1959 and received by petitioner on April 27, 1959. This letter of April 16, 1959 is the decision of the respondent that is appealable to this Court because it is the decision on a disputed assessment. (Commissioner of Internal Revenue vs Leonardo S. Villa and The Court of Tax Appeals, G.R. No. L-23988, January 2, 1968.) The receipt, therefore, of the said letter by petitioner on April 27, 1959, marked the start of the statutory thirty (30) day period provided in Section 11 of Republic Act No. 1125.

In a letter of petitioner dated April 30, 1959 and received by respondent on the same date, the former requested a reconsideration of the decision of the latter requiring petitioner to pay the sum of ₱2,179.00 as deficiency income tax for the year 1953. From April 27, 1959 to April 30, 1959, only three (3) days had been consumed by petitioner. The statutory period resumed its flight on September 7, 1959 when petitioner received the denial of respondent dated August 26, 1969. This petition was filed on September 8, 1959. From September 7, 1959 to the date of the filing of the appeal on September 8, 1959, petitioner used another one (1) day. Thus only four days of the thirty-day period for appeal had been consumed by petitioner when it interposed the present appeal which is necessarily on time.

We find no merit in respondent's contention that the letter of petitioner dated April 30, 1959, was pro forma and did not interrupt the thirty-day period to appeal. A reading of petitioner's letter dated April 30, 1959, discloses that the second request for reconsideration was based on the additional grounds of prescription and deductibility of the disallowed items which had not been raised before. The aforesaid reconsideration was obviously not pro forma.

With respect to the issue of prescription of the assessment, the law applicable reads as follows:

> "Sec. 331.- Period of limitation upon assessment and collection.- Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for filing thereof shall be considered as filed on such last day; Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code." (National Internal Revenue Code. Underlining supplied.)

It is not disputed that the income tax return of petitioner for the fiscal year ending June 30, 1953 was filed by it on October 28, 1953 and the deficiency assessment dated October 24, 1958 was received by petitioner on October 28, 1958, or exactly five (5) years from the date of filing the return. We use the date of receipt because there is no evidence as to the date of mailing. Clearly, the assessment had not prescribed when it was made.

With regards to the third issue, petitioner contends that the assessment is illegal because it was issued by a provincial revenue officer who had no authority to make and issue the same. We find this contention to be devoid of merit. It should be noted that the assessment was made and issued by a provincial revenue officer on behalf of the Regional Director. A provincial revenue officer is authorized by the Regional Directors to sign their names in those cases where an assessment is about to prescribe. This is a standard procedure adopted in the Bureau of Internal Revenue. An assessment thus made is, therefore, as valid as if it were personally made by either a Regional Director or the Commissioner of Internal Revenue himself.

Petitioner contends further that the assessment is illegal because the procedure set forth in the Internal Revenue Manual on Audit and Investigation was not followed by respondent in arriving at the aforesaid assessment. We find this contention equally unmeritorious. The Internal Revenue Manual on Audit and Investigation is a set of rules and regulations for the performance of auditing and investigative functions, and such being the case, it is only for the internal administration of the office, a guide to the employees or subordinate officers for the efficient operation of the office. A violation thereof may have repercussions on the subordinate officers but will not affect the legality of the assessment. They are not jurisdictional matters and deviations from the aforesaid procedure do not render an assessment invalid or illegal.

With respect to the last issue, we shall first take up the disallowed salaries of some officers and employees of petitioner corporation. Respondent reduced the salaries of the manager of lumber concession, sugar farm superintendent and clerk in the lumber yard, in the total amount of ₱4,600.00 because this sum is allegedly profits of the corporation distributed in the guise of salaries. This contention is premised on the allegations that said officers are also stockholders of the corporation and that their salaries are excessive compared to those of officers of other corporations holding similar positions and doing the same volume of business.

The general rule is that the employer is given a wide latitude of discretion in the amount of salaries paid to the employees. A corporation has the right to fix the compensation of its employees (Ledesma vs Collector of Internal Revenue, 42 Phil. 912). A breakdown of the reduction is perhaps enough to show that the reduction is without foundation. Respondent reduced the salary of the sugar farm manager from ₱19,600.00 to ₱18,000.00, and that of a clerk in the lumber yard who works seven days a week, including Sundays, from ₱3,600.00 to ₱3,000.00, because they are allegedly excessive compared to salaries of officers or employees of other corporations similarly situated and thus the excess is a disguised distribution of profit. Respondent reduced the salary of petitioner's manager of lumber concession from ₱9,600.00 to ₱7,200.00, representing a cut of ₱2,400.00, for the same reason.

There is no comparative study of the profits of the two enterprises in relation to other concerns similarly situated. Neither is there any comparative study of the peculiar situation of the two enterprises in relation to other concerns, nor is there a comparison of the nature and volume of the work performed by the officers involved. Since no two business enterprises are exactly in the same situation, negligible differences in salaries cannot reasonably show that the salary is excessive or that profits are channeled to the stockholders thru salaries. Respondent's reduction would rather appear as arbitrary specially in the light of the fact that petitioner reported a net income of ₱70,653.29 and ₱4,600.00 is, in a manner of speaking, but a mere drop in the bucket with respect to profits.

Petitioner claims that the value of medicines in the total sum of ₱4,278.14 is deductible as loss on the ground that the aforesaid medicines were no longer fit for sale as the dates of their efficacy have expired (see pp. 24-26, t.s.n., May 13, 1963). Aside from self-serving testimonial evidence, no other evidence was presented to substantiate this claim of petitioner. There is not even a list of the medicines, their value, and their expiry dates. Under the circumstance, we are constrained to sustain the disallowance of this alleged loss.

Respondent disallowed the deduction of the amount of ₱1,000.00 which petitioner contributed for the candidacy of Congressman Lorenzo Teves (see pp. 31-33, t.s.n., May 13, 1963). Amounts expended for political campaign purposes or payments to campaign funds are not deductible either as business expenses or as contribution (Mertens, Law of Federal Income Taxation, 1960 Ed., Vol. 4, Chap. 25, pp. 384-388).

Lastly, the miscellaneous expenses in the total amount of ₱1,018.58, claimed by petitioner as deduction, were properly disallowed by respondent. It appears that the aforesaid miscellaneous expenses are not supported by receipts or by any other documentary evidence. The mere testimony of petitioner's Vice President is not enough to warrant their deduction.

Under the foregoing premises, petitioner's tax liability is ₱1,259.00, computed as follows:

Net income per return		₱70,653.29
Add: Unallowable deductions -		
Loss in the reduction of merchandise inventory to market	₱4,278.14	
Contribution to the candidacy of Congressman Lorenzo Teves	1,000.00	
Miscellaneous expenses classified personal & no supporting receipts..	1,018.58	6,296.72
Net income per investigation		₱76,950.01
Less: Personal & additional exemptions		-.-
Net income subject to tax		₱76,950.01
Tax due		₱15,390.00
Less: Tax already assessed		14,131.00
Balance still due		₱ 1,259.00

WHEREFORE, the decision appealed from is hereby modified. Petitioner is hereby ordered to pay respondent the amount of ₱1,259.00 as deficiency income tax for the fiscal year ending June 30, 1953. If the deficiency tax is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay a surcharge of five per cent (5%) of the unpaid amount plus interest at the rate of one per cent (1%) a month, computed from the date this decision becomes final until paid, provided that the maximum amount that may be collected as interest shall not exceed the amount corresponding to a period of three (3) years. With costs against petitioner.

SO ORDERED.

Quezon City, April 30, 1969.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge