Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

C. SORIENTE, INC.,
Petitioner,

versus

Dec. 19, 1966

C. T. A. CASE NO. 1550

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - x

DECISION

Petitioner seeks the review of respondent's decision holding it liable for the payment of the amount of ₱1,983.99 representing deficiency income tax for the year 1958.

Petitioner is a domestic corporation duly organized in accordance with the laws of the Philippines, with principal office at Calvo Bldg., Escolta, Manila. On or about April 15, 1959, petitioner filed its income tax return for 1958, showing a gross income of ₱11,-250.00, a total deduction of ₱9,162.16, a net income of ₱2,087.84, and a tax liability of ₱418.00 (Exhs. A & 1, p. 2, BIR rec.). The deductions claimed by the taxpayer, as itemized, are:

Officer's Allowances . . .	₱6000.00
Interest on Loans	560.01
Bank Charges	10.00
Representation	2592.15
Total . . .	₱9162.16

The reported income consists solely of dividends derived by the petitioner from its investments in the

Hotel Filipinas, Inc. (Exhs. D & 11, 10 & 3, pp. 14, 19 & 24, BIR rec.). Upon verification of said return, the sums of ₱6,000.00 and ₱2,592.15, representing deductions for officer's allowances and representation expenses, were disallowed (Exhs. 5 & 6, pp. 9 & 11, BIR rec.). Accordingly, Deficiency Assessment Notice No. 90-58-1551 for the amount of ₱1,983.99, inclusive of ½% monthly interest from June 20, 1959 to January 20, 1962, was issued against petitioner on January 10, 1962 (Exhs. B & 7, p. 13, BIR rec.).

In a letter dated September 8, 1962 and received by respondent on September 11, 1962 (Exhs. C & 8, p. 15, BIR rec.), petitioner requested the cancellation and/or setting aside of the assessment, contending that it is arbitrary and unjust. On April 29, 1964, said request was denied (Exhs. D & 11, p. 24, BIR rec.). In a letter dated May 22, 1964 (Exhs. E & 12, p. 26, BIR rec.) and received by respondent on June 3, 1964, petitioner reiterated its request for reconsideration and setting aside of the assessment. In a letter dated October 15, 1964 (Exhs. F & 13, p. 33, BIR rec.), respondent denied this last request. On December 9, 1964, petitioner filed this case with this Court.

As may be gleaned from their respective memoranda, the parties raised only one principal issue in this case, to wit: whether or not the disallowance of the allowance and representation expenses is proper.

The rule on deductions under the income tax law is stated in Section 30 of the National Internal Revenue Code, the pertinent portion of which reads as follows:

> SEC. 30. Deductions from gross income. - In computing net income there shall be allowed as deductions -
>
> (a) Expenses:
>
> (1) In general. - All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; x x x.

It appears in the testimony of petitioner's witness, Accountant Manuel Francisco, that the allowance of ₱6,000.00 was given to Candido Soriente, chairman of petitioner's board of directors, not as compensation but to be used for gathering information from stockbrokers and businessmen as to what investments are profitable; however, not even one instance of information gathering was cited; not even a little explanation as to how information would be gathered was made. The sum of ₱2,592.15 listed as representation expenses was allegedly spent "in small sums representing different expenses" for parties given to stockbrokers by the same chairman of the board, Catalino Soriente; this appears in the testimony of the same witness of the petitioner. What strikes us first and foremost in petitioner's evidence is that the allowance and the expenses for representation have overlapping, not to say the same, purposes because the gathering of information can very well be made during the alleged parties. Another thing that strikes us is that no reasonable explanation as to how these expenses helped the business of the petitioner or enhanced its income in 1958 was offered. The uncontroverted facts of this case militate against petitioner's position.

It is not uncontroverted that petitioner is dedicated solely to investments; that its only investment in 1958 were shares of stock in the Filipinas Hotel in which Candido Soriente was also an officer; that said investment was made before 1958; that it did not make any new investment in that year and as a matter of fact it does not make any claim that it was contemplating to make any new investment when the disbursements in question were made; and that all it did in that year was to receive its dividends from the Hotel Filipinas. Considering these circumstances, petitioner can hardly claim that the expenses in question that nearly absorbed its gross income are ordinary and necessary within the accepted meaning of these terms in the income tax law. Without these expenses petitioner would have received its dividends just the same. Petitioner's claim that had these disbursements not been made, it might have sold the Filipinas Hotel stocks and it would not have received the dividends, is puerile, to say the least. Apart from the fact that its chairman of the Board was also an officer of the Filipinas Hotel and must have been abreast with the financial situation of the enterprise, petitioner as a stockholder thereof had the right of access to its books; by simply using this right, petitioner could have kept track of its investment without the necessity of giving parties to brokers or spending ₱8,592.15 out of a gross income of ₱11,250.00 and receiving a net of only ₱1,669.84 after deducting income taxes.

From all indications, the expenses in question are either disguised distribution of dividends or disguised compensation. As dividends, it goes without saying that they are not deductible. As compensation, neither are they deductible, for they appear to have no reasonable relation to the measure of the services rendered by Candido Soriente. In Alhambra Cigar and Cigarette Manufacturing & Co. vs. Collector of Internal Revenue (G. R. No. L-12026, May 29, 1959) our Supreme Court, adopting the language of this Court, said the following:

> "We believe we do not find it necessary to determine here whether the amounts allegedly representing directors' fees paid by petitioner to these officers as compensation for their services as directors cannot be allowed as ordinary and necessary expenses within the purview of Section 30(a)(1) of the National Internal Revenue Code. However, suffice it to say, that these extraordinary and unusual amounts paid by petitioner to these directors in the guise and form of compensation for their

> supposed services as such, without any relation to the measure of their actual services, cannot be regarded as ordinary and necessary expenses within the meaning of the law. . . ."

WHEREFORE, finding no error in the assessment subject of this appeal, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, December 19, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge