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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIMPAN INVESTMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2424

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

10/29/80

D E C I S I O N

In its original petition for review filed with this Court on July 28, 1972, petitioner Limpan Investment Corporation sought the review of an assessment dated April 3, 1972 of respondent Commissioner of Internal Revenue in the amount of ₱272,803.66 as 25% surtax for unreasonable accumulation of surplus for the year 1970. On March 28, 1973 petitioner amended, upon leave of court, its petition for review by adding thereto a second cause of action to dispute the validity of another assessment of respondent dated February 28, 1973 in the sum of ₱281.42 representing deficiency income tax for the same year 1970 as a result of the disallowance of a commission expense deduction claimed by petitioner in taxable year 1970. And on June 4, 1975 petitioner again moved to file, and was allowed, a second amended petition for review dated May 31, 1975 for the recovery of the amount of ₱369.34 alleged to have been erroneously and illegally collected by respondent as deficiency income tax for the year 1970, subject matter of the second cause of action in the amended petition for review.

On December 17, 1975 respondent filed his answer to the second amended petition for review dated May 31, 1975 of petitioner. With respect to the first cause of action, respondent stated therein that his "assessment of ₱272,803.66 for 25% surtax on unreasonable accumulation of surplus was already cancelled on May 7, 1973, and on the same date a letter duly signed by Mr. Conrado P. Diaz, Acting Commissioner of Internal Revenue, was released and mailed to the petitioner informing him of the cancellation thereof." (par. 2, Amended Answer, p. 62, CTA records.) In this letter of May 7, 1973, respondent informed petitioner that upon reinvestigation, it was finally ascertained that petitioner is not liable to the 25% surtax for unreasonable accumulation of surplus. In view thereof, his letter of demand dated April 3, 1972 calling for the payment of the amount of ₱272,803.66 as 25% surtax for unreasonable accumulation of surplus was recalled and cancelled. Hence, this facet of the case, which is the subject matter of the first cause of action in the second amended petition for review, may now be considered closed and terminated. (p. 125, BIR records.)

With the cancellation and withdrawal by respondent of his assessment calling for the payment of ₱272,803.66 representing 25% surtax on improperly accumulated profits, the lone question tendered for resolution is whether petitioner is entitled to the refund of the amount of ₱369.34 representing alleged erroneous payment of deficiency income tax for 1970, inclusive of surcharge and interest, subject matter of the second cause of action of the second amended petition for review.

The records reveal that after investigation of petitioner's tax liabilities for the year 1970, respondent issued Assessment No. 34-4-700076-70 dated February 28, 1973 for the amount of ₱281.42 as deficiency income tax for the same year. (pp. 57-58, Folder II, BIR records.) It appears that the deficiency income tax was the result of the disallowance of a claimed commission expense deduction in the sum of ₱1,000.00 for not being spent in connection with petitioner's trade or business and for not being duly supported. (p. 36, Folder II, BIR records.) Petitioner protested the assessment in a letter dated March 26, 1973. (par. 11, Second Amended Petition for Review, p. 45, CTA records &

par. 5, Amended Answer, p. 63, CTA records.) However, on April 7, 1975 petitioner paid to the Bureau of Internal Revenue under Central Bank Official Receipt No. 442519 dated April 7, 1975 the amount of ₱281.42 as deficiency income tax for 1970, plus surcharge and interest thereon of ₱14.07 and ₱73.85, respectively, or a total of ₱369.34, which petitioner claims to be on the basis of Assessment No. 34-4-700076-70. (par. 12, Second Amended Petition for Review, p. 46, CTA records; par. 8, Amended Answer, p. 63, CTA records.) Alleging that the payment was illegal and erroneous, petitioner on May 17, 1975 filed its claim for refund with respondent of the sum of ₱369.34. Since no action was taken by respondent on its claim for refund, petitioner brought this matter to this Court. (par. 13, Second Amended Petition for Review, p. 46, CTA records; par. 7, Amended Answer, p. 63 CTA records.)

Is petitioner legally entitled to the refund of the amount of ₱369.34?

Where deduction for expenses is disallowed by the Commissioner of Internal Revenue, it is incumbent upon the taxpayer to prove that the expense is allowable under the law. The taxpayer must show that the amount allegedly spent was actually spent and that it is an ordinary and necessary expense in carrying on the trade or business of the taxpayer. And if the deduction represents compensation for services, the law further requires that (1) payment must be for services actually rendered and (2) the compensation paid must be reasonable in amount. (Sec. 70, Revenue Regulations No. 2; Sec. 30, National Internal Revenue Code.) Even more, any claim for deduction must be substantiated by record showing in detail the amount and nature of the expenses incurred. (Sec. 66, Revenue Regulations No. 2.) The bare statement of a taxpayer that an item of expense is ordinary and necessary, unaccompanied by adequate evidence, has no weight with the Commissioner of Internal Revenue or with the courts. (De Vera vs. Collector of Internal Revenue, CTA Case No. 167, March 23, 1959; Basilan Estates vs. Commissioner of Internal Revenue, L-22494, September 5, 1967, 21 SCRA 17.)

Here in the case at bar, while petitioner during the hearing on September 23, 1976 had already started presenting its witness for the purpose of identifying and marking its documentary exhibits in order to prove (probably) payment of its claimed commission expense deduction of ₱1,000, and explaining the nature of the service rendered for which the commission was paid, the said documentary exhibits were never presented and admitted by the Court as evidence for petitioner, and the taking of the testimony of the witness of petitioner was not completed. (t.s.n., pp. 4-26, hearing on September 23, 1976.) The examination of petitioner's witness was suspended upon motion of respondent and without objection of petitioner to give time for respondent to get a copy of the transcript of stenographic notes and prepare for his cross examination and evidence. (Ibid, p. 26.) Then for some reason or another, the hearing of the case was postponed several times, although mainly to give a chance for the appellate division of the Bureau of Internal Revenue to process administratively petitioner's claim for refund. After respondent manifested in open court during the hearing on July 10, 1980 that the claim for refund could not be settled administratively because petitioner has an outstanding tax liability in the Bureau of Internal Revenue, and requested for the resetting of this case so that evidence could be presented to this effect, which was granted, by agreement of the parties this case was submitted for decision based on the pleadings and records without the parties presenting or offering their respective exhibits and evidence and the Court admitting them. (See

(Minutes of the session of the Court, September 24, 1980, p. 99, CTA records.)

Parenthetically, it may be stated that one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted. (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al, 76 Phil. 115.) Consequently, the following special and affirmative defenses of respondent in his Amended Answer may be deemed undisputed, to wit:

> "8. That the amount of ₱369.34, representing alleged payment of deficiency income tax for 1970, subject matter of the Second Cause of Action, was paid and collected in accordance with law and therefore, not refundable;
>
> "9. That it is incumbent upon the taxpayer to show that it has complied with the requirements of Section 306 and 309 of the Tax Code;
>
> "10. That in an action for refund, the burden of proof is upon the taxpayer to show that the taxes paid were erroneously collected and failure to do so is fatal to the action for refund;
>
> "11. That taxes paid are presumed to be collected in accordance with law."

It seems already well-settled that in an action for recovery of taxes alleged to have been erroneously or illegally assessed or collected, the taxpayer or petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed because taxes are presumed to have been assessed or collected in accordance with law. As a matter of fact, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue or the Commissioner of Customs is wrong but that he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; See also Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to present evidence or proof in support of his allegations in his petition for review, conformably to the doctrine of the presumption in favor of the correctness of tax assessment (Inter-provincial Auto-bus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13462, April 29, 1960, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer.

(See Esso Standard Fertilizer & Agricultural Chemical Co., Inc. vs. Commissioner of Internal Revenue, CTA Cases Nos. 1862, 1879, 1888, 1893 & 1896, May 30, 1980.) Moreover, claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, January 30, 1970, 31 SCRA 95.) A refund partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resins, Inc. vs. Auditor General, L-17888, October 29, 1968, 25 SCRA 754.)

Petitioner Limpan Investment Corporation having failed to establish in clear and unmistakable terms that it is entitled to its claim for refund and to prove by competent evidence that its payment to respondent of its deficiency income tax for 1970 is illegal and erroneous, refund of the alleged illegally and erroneously paid deficiency income tax for the year 1970 in the amount of ₱369.34 should therefore be denied.

WHEREFORE, finding no merit in this appeal, the above-entitled case is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, October 29, 1980.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge