REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARMEL CORPORATION,
Petitioner,

- versus -   C.T.A. CASE NO. 2775

THE HONORABLE EFREN I. PLANA, as Acting Commissioner of Internal Revenue,
Respondent.
x - - - - - - - - - - - x

1/30/81

D E C I S I O N

In a letter-assessment dated March 30, 1970, respondent Commissioner of Internal Revenue informed petitioner Carmel Corporation that upon investigation there has been found due from it deficiency income tax for the year 1964 in the amount of ₱37,205.40, details of which are as follows:

Net income per return - - - - - - - - - - - -		₱ 42,294.26
Add: Unallowable deductions:		
1. Additional interest income -	₱19,621.35	
2. Miscellaneous expenses - -	8,507.01	
3. Transportation expenses - -	8,304.73	
4. Representation expenses - -	14,107.91	
5. Salaries - - - - - - - - - - -	16,500.00	
6. Insurance - - - - - - - - - -	3,182.80	
7. Commissions - - - - - - - - -	30,266.00	
8. Bonus - - - - - - - - - - - - -	20,000.00	120,489.80
Net income per investigation - - - - - - -		₱162,784.06
Tax due thereon - - - - - - - - - - - - - - -		₱ 40,835.00
Less: Amount already assessed - - - - - -		9,305.00
B a l a n c e - - - - - - - - - - - - - -		₱ 31,530.00
Add: ½% mo. int. fr. 4-20-65 to 4-20-68 -		5,675.40
TOTAL AMOUNT DUE & COLLECTIBE - - - - - -		₱ 37,205.40

Petitioner was therefore requested by respondent to pay the said deficiency tax to his collection agent promptly upon the receipt thereof. (p. 40, BIR records.)

To enforce collection of the alleged deficiency income tax liability, which apparently was not paid promptly by petitioner, warrants of distraint and of levy were served on petitioner on January 4, 1971. (pp. 58 & 61, BIR records.) While certain personal properties of petitioner were placed under constructive distraint, the execution of the warrants of distraint and of levy was however suspended because the request for re-investigation of the case dated January 19, 1971 of petitioner was granted by respondent, and petitioner had already submitted on April 13, 1970 a waiver of the defense of prescription. (pp.44, 62, 68 & 69, BIR records.)

In his demand-letter of December 21, 1971, respondent however reiterated, because of failure of petitioner to present substantial proof or evidence to negate the findings of his office, the original assessment. (p. 83, BIR records.) After adding thereto the increments incident to delinquency and compromise penalty for late payment, the deficiency income tax liability of petitioner for the year 1964 had been increased to ₱46,645.03, computed as follows:

(p. 83, BIR records).

1964 deficiency income tax due (23-ACR-500215-69/64)	₱37,205.40
Add: 5% surcharge on ₱31,530.00. . . .	1,576.50
1% mo. int. on ₱37,205.40 from 3-21-70 to 12-21-71	7,813.13
Compromise for late payment . . .	50.00
TOTAL AMOUNT DUE & COLLECTIBLE	₱46,645.03

In asking for the cancellation and withdrawal of the aforesaid assessment of ₱46,645.03, petitioner, in his letter of October 31, 1972 to respondent, explained, but unaccompanied by adequate evidence, the nature of its disallowed claimed deductions, and requested that pending consideration of its protest and so as not to prejudice its business, the warrants of distraint and of levy against its property and right to property be lifted. (pp. 104-108, BIR records.) Surprisingly, notwithstanding the issuance or re-issuance of warrants of distraint and of levy against petitioner's properties to enforce collection of its deficiency income tax liability for 1964, the said deficiency income tax remained unpaid, for on September 15, 1975 respondent in a form-letter to petitioner invited its attention to "the President's Letter of Instructions No. 308, issued August 22, 1975, which authorizes the Commissioner of Internal Revenue to review and evaluate and to exercise his authority to make compromise as a mode of settling expeditiously all delinquent tax liabilities." Should petitioner desire to take advantage of Letter of Instructions No. 308, respondent suggested that petitioner would apply in writing for compromise settlement, stating the reasons or grounds to be considered and to personally or by representative appear and confer with the chief of the appellate division of the Bureau of Internal Revenue. (p. 119, BIR records.)

By its letter of October 14, 1975, petitioner advised respondent however that it had availed of the tax amnesty under Presidential Decree No. 23. (p. 120, BIR records.) In reply thereto, respondent informed petitioner that he could not cancel the deficiency income tax liability for 1964 in the amount of ₱46,645.03 for the reason that "the aforesaid liability is not affected by the availment of the tax amnesty under Presidential Decree No. 23 since it was assessed on December 21, 1971 or prior to the effectivity on October 20, 1972 of Revenue Regulations No. 8-72, which implements the provisions of Presidential Decree No. 23." In view thereof, demand was made by respondent for the payment of the deficiency income tax for 1964, but if petitioner was not satisfied with such decision, it could appeal to this Court within thirty days from receipt thereof. (pp. 121-122, BIR records.)

Hence the instant appeal filed on February 6, 1976.

After the issues were joined with the filing by respondent on May 5, 1976 of his answer to the petition for review, the case was set for trial on the merits. However, the trial was postponed for no less than seven times mainly upon request of counsel for petitioner allegedly because he had to prepare for trial, get in touch with his witness or had to attend other court hearings. Then on February 27, 1979 petitioner filed an amended petition for review stating for the first time that "the alleged income tax deficiencies assessed against petitioner refers to additional interest income, miscellaneous expenses, representation expenses, salaries, insurance, commissions and bonus, plus surcharges and penalties thereon" (p. 40, CTA records), when all the time the disallowance of these items, which resulted in the deficiency income tax assessment in question, had all been specifically enumerated, together with their respective amount, in the deficiency assessment received by petitioner and had been contested by it item by item in its letter of October 31, 1972 on the basis of which petitioner requested that the assessment should be cancelled and withdrawn (pp. 104-108, BIR records).

Under paragraph VI of his answer to the amended petition for review, respondent specifically denied these allegations of petitioner for being erroneous conclusions of fact and/or law, and stated in this connection that petitioner's protest on the deficiency tax assessment involving the aforesaid items was denied by him in his letter-decision dated December 21, 1971. Respondent further alleged that said decision not having been appealed to this Court within thirty days from receipt thereof as mandated by Sections 7 and 11 of Republic Act No. 1125, the same had already become final and executory. (p. 56, CTA records.)

The case was again set for trial on the merits, but after petitioner had marked a few documents found in the records of the Bureau of Internal Revenue bearing on this proceeding, which were never presented and admitted by the Court, petitioner requested for the resetting of the case. For no less than three times, petitioner again requested for the postponement and/or cancellation of the trial, until the Court warned petitioner that if petitioner and/or counsel failed to appear in the next hearing, the case would be dismissed for failure to prosecute. (Minutes of the session of the Court on June 18, 1980, p. 65, CTA records.) During the hearing of this case on

July 29, 1980, because of failure of petitioner and/or counsel to appear, respondent submitted the case for decision, as agreed upon in the last hearing, on the basis of the records of the case and the pleadings. (Minutes of the session on July 29, 1980, p. 66, CTA records.) In fairness to petitioner, however, the Court issued the following order, copy of which was received by petitioner on January 16, 1981: (pp. 67-68, CTA records.)

> "O R D E R
>
> Confirming the order given in open court on July 29, 1980, granting respondent's manifestation to submit this case for decision based on the pleadings and records, inasmuch as petitioner's counsel failed again to appear despite proper notice and warning by this Court, this case is hereby considered submitted for decision on the basis of the pleadings and records of the Bureau of Internal Revenue.
>
> SO ORDERED.
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> Quezon City, December 12, 1980."

The decisive question is whether or not the following claimed deductions:

1.	Additional interest income - -	₱ 19,621.35
2.	Miscellaneous expenses - - - -	8,507.01
3.	Transportation expenses - - -	8,304.73
4.	Representation expenses - - -	14,107.91
5.	Salaries - - - - - - - - - - -	16,500.00
6.	Insurance - - - - - - - - - - -	3,182.80

7. Commissions	- - - - - - - -	₱ 30,266.00
8. Bonus	- - - - - - - - - -	20,000.00
	Total - - -	₱120,489.80

the disallowance of which by respondent resulted in the deficiency income tax liability of petitioner for the year 1964, are allowable deductions under Section 30 of the National Internal Revenue Code.

At the outset, it should be stated that tax assessments are presumed to be correct unless the contrary is shown, and the burden of proof rests upon the taxpayer to overcome this presumption. As a matter of fact, the burden of the taxpayer contesting the validity or correctness of an assessment is to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) vs. Commissioner of Internal Revenue, CTA Cases Nos. 1862, 1879, 1888, 1893 & 1896, May 30, 1980; Augusto L. Guanzon vs. Efren I. Plana, Commissioner of Internal Revenue, CTA Case No. 2821, August 27, 1980; Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to appear and present evidence or proof in support of his allegations in his petition for review or amended petition for review, conformably to the doctrine of the presumption in favor of the correctness of the 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 13462, April 29, 1960, 107 Phil. 905), the Court of Tax Appeals will merely sustain the assessment against the taxpayer. (Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) vs. Commissioner of Internal Revenue, supra.)

Even more, 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.) Furthermore, 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 corts. (De Vera vs. Collector of Internal Revenue, CTA Case No. 167, March 23, 1969; Basilan Estates vs. Commissioner of Internal Revenue, L-22494, September 5, 1967, 21 SCRA 17; see also Limpan Investment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2424, October 29, 1980.) Well-settled is the rule that income tax deduction is a matter of legislative grace and the burden of proof clearly showing the right to the claimed deduction is upon the taxpayer. (Hospital de San Juan de Dios vs. Commissioner of Internal Revenue, CTA Case No. 1693, August 29, 1969.)

On these points, the Supreme Court has reiterated in clear and unequivocal terms, in the recent cases of Atlas Consolidated Mining & Development Corpo ration vs. Commissioner of Internal Revenue, L-26911, January 27, 1981, and Commissioner of Internal Revenue vs. Atlas Consolidated Mining & Development Corporation and Court of Tax Appeals, L-26924, January 27, 1981, that:

> "The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. As previously adverted to, the law allowing expenses as deduction from gross income for purposes of the income tax is Section 30(a)(1) of the National Internal Revenue which allows a deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." An item of expenditure, in order to be deductible under this section of the statute, must fall squarely within its language.
>
> We come, then, to the statutory test of deductibility where it is axiomatic that to be deductible as a business expense, three conditions are imposed, namely: (1) the expense must be ordinary and necessary, (2) it must be paid or incurred within the taxable year, and (3) it must be paid or incurred in carrying in a trade or business. In addition, not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction.

Here in the case at bar, as narrated above, while petitioner during the hearing on October 18, 1979, after several postponements of the trial, had already started marking a few documents, i.e., income tax return for 1964, financial report as of December 31, 1964, memorandum report of the revenue examiner and letter of counsel dated October 3, 1972 to the Bureau of Internal Revenue, the same were never presented and offered for admission by the Court as evidence of petitioner. (Minutes of the session on October 18, 1979, p. 59, CTA records.) After that petitioner merely requested the resetting of the case, but on the scheduled dates of hearing, it only asked for postponement in order to have more time, allegedly, to locate its records. Then after several postponements of the trial, all upon the request of petitioner, respondent, during the hearing on July 29, 1980, but not after the Court had warned petitioner that it would dismiss the case for failure to prosecute, submitted the case for decision based on the records and pleadings. (Minutes of the session on July 29, 1980, p. 66, CTA records.)

Petitioner failed not only to prove that the Commissioner of Internal Revenue is wrong and that petitioner is correct but it did not even bother to enter into trial and present evidence in support of the material and relevant allegations in its petition for review or amended petition for review, all of which were specifically denied by respondent. As a matter of fact, petitioner did not take the trouble, even in its contesting letter to the Bureau of Internal Revenue dated October 31, 1972 (pp. 104-

108, BIR records), to point to the specific provisions of the statute in which its claimed deductions are authorized, and that petitioner is entitled to the deductions which the law allows. No record or evidence whatsoever was presented by petitioner to support its claimed deductions. The law requires that any claim for deduction must be properly substantiated, when required by the Commissioner of Internal Revenue, by record showing in detail the amount and nature of the expenses incurred (Sec. 66, Revenue Regulations No. 2), and 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 or with the courts. Petitioner having failed to comply with these basic principles governing deductions from gross income, its claimed deductions under consideration, which were disallowed by respondent Commissioner of Internal Revenue, can not be allowed as deductions under Section 30 of the Tax Code.

Not much need be said on petitioner's allegation in its petition and amended petition for review that its availment of the tax amnesty under Presidential Decree No. 23, issued on October 16, 1972, entitled it to the immunity provided for therein. Aside from the fact that this was specifically denied by respondent in his answers and no evidence whatsoever was presented by petitioner to prove this point, petitioner's income tax liability for 1964 in the amount of ₱46,645.03 is not affected by the availment of the tax amnesty under Presidential Decree No. 23, as aptly stated by respondent Commissioner of Internal Revenue, because it was assessed on December 21, 1971 or prior to the effectivity on October 20, 1972 of Revenue Regulations No. 8-72, which implements the provisions of Presidential Decree No. 23. To quote Section 4 thereof:

> "Section 4, Who may not avail of the amnesty. - All taxpayers, natural or juridical, against whom a valid information under Republic Act No. 2338 has been filed or a notice of deficiency assessment has been issued by the Bureau of Internal Revenue prior to the effectivity of Revenue Regulations No. 8-72, as amended, may not avail of the immunity provided for in Presidential Decree No. 67." (Section 4, Revenue Regulations No. 15-72, December 11, 1972).

The compromise penalty for late payment in the amount of ₱50.00 suggested by respondent in his assessment should not however be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, L-22805 & 27856, June 30, 1975, 64 SCRA 555; See also Collector of Internal Revenue vs. University of Santo Tomas, L-11274 & 11280, November 28, 1958, 104 Phil. 1062, Unpub.; Philippine International Fair, Inc. vs. Collector of Internal Revenue, L-12928 & 12932, March 31, 1962, 4 SCRA 174.).

Accordingly, petitioner Carmel Corporation is hereby ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱46,595.03 as deficiency income tax for the year 1964, plus the surcharges and interest which have accrued thereon incident to delinquency pursuant to Section 51(e) of the National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby modified in the sense that the compromise penalty should not be imposed and is affirmed in all other respects. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 30, 1981.

Amante Filler
AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes
ALEX Z. REYES
Associate Judge