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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ROBERT L. JANDA,
Petitioner,

July 16, 1962

- versus - C.T.A. CASE NO. 87

J. ANTONIO ARANETA, as Acting Collector of Internal Revenue,
Respondent.

not appealed

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

D E C I S I O N

The petitioner is an American citizen and, during the period under review, was residing and engaged in the practice of law in the Philippines. (Par. 1, Agreed Statement of Facts, hereinafter referred to as Stifacts; pp. 13-15, CTA rec.) On April 28, 1951, he filed with the office of the respondent a return of his income for the year 1950 from both Philippine and United States sources, as follows:

Total Philippine gross income	₱150,717.96
Total United States income	3,267.80
Total gross income from all sources	₱153,985.76

(Par. 2, Stifacts.)

On the basis of the return filed by the petitioner, the respondent assessed, and the petitioner paid the total amount of ₱54,299.64, as income tax for the year 1950. However, as a result of the adjustment of depreciation charges claimed by the partnership of Ross, Selph, Carrascoso & Janda, the petitioner subsequently paid an additional income tax of ₱768.00. (Par. 3, Stifacts.)

Included among the deductions claimed by the petitioner in his return is the amount of ₱1,469.63, itemized in the return under the heading "U.S. Taxes", and which the petitioner deducted citing as authority Section 30(c)(1) of the Tax Code. (Par. 4, Stifacts.) Of the items under the heading "U.S. Taxes", the respondent approved and allowed as a deduction, only the amount of ₱380.51 representing the real estate tax which the petitioner paid to the State of California. All the other items under the same heading amounting to ₱1,089.12, were disallowed by the respondent on the ground that such items are not deductible under the provisions of Section 30 (c)(2)(B) of the Tax Code. (Par. 6, Stifacts.)

However, the respondent admits the payment by the petitioner to the United States and/or the State of California of the following items:

U.S. stamp tax	₱ 7.70
California personal property tax ...	39.70
California sales tax	394.32
Passport	20.20
Hunting & Fishing license	22.00
Auto license	68.00
Federal excise tax (on automobile)..	240.80
Hotel tax	15.20
	₱807.92

(Par. 5, Stifacts.)

In view of the disallowance of the above mentioned items as deductions from the gross income, the respondent assessed against and demanded from the petitioner the sum of ₱577.00 as deficiency income tax for the year

1950, exclusive of penalties. (Par. 7, Stifacts.)

As to the issue to be resolved in the case at bar, "the parties are submitting this case x x x for decision and ruling on the legal question of whether or not taxes paid by an American citizen residing in the Philippines to a foreign government are deductible under Section 30 (c)(1) of the National Internal Revenue Code", (Par. 9, Stifacts) which provides as follows:

> "Sec. 30. Deductions from gross income.- In computing net income there shall be allowed as deductions -
>
> x x x x
>
> (c) Taxes:
>
> (1) In general.- Taxes paid or accrued within the taxable year, except -
>
> (A) The income tax provided for under this Title;
>
> (B) Income, war-profits, and excess-profits taxes imposed by the authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) of this subsection (relating to credit for taxes of foreign countries);
>
> (C) Estate, inheritance and gift taxes; and
>
> (D) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed."

Note what the law says: "In computing net income, there shall be allowed as deductions," among others, "Taxes paid or accrued within the taxable year." As correctly pointed out by the petitioner herein, the law does not make any distinction as to whether the taxes mentioned therein are domestic or foreign taxes, and we are satisfied that no distinction was intended and that none is warranted. (Castro vs. Collector of Internal Revenue, G.R. No. L-12174, April 26, 1962) Ubi lex non distinguit, nec nos distinguere debemus. When the law does not distinguish, there is no justification to make any distinction. Therefore, foreign taxes, like domestic taxes, paid or accrued within the taxable year are deductible from the gross income of Philippine citizens and resident aliens. (See Mertens, Law of Federal Income Taxation, Vol. 5, Chap. 27, p. 55, 1956 Edition.)

We noted from the "Agreed Statement of Facts" (pp. 13-15, CTA rec.) that the respondent disallowed the other questioned items under the heading "U. S. Taxes", "alleging that such items are not deductible under the provisions of Section 30 (c)(2)(B) of the Tax Code" (par. 6, Stifacts) which read as follows:

> "Sec. 30. Deductions from gross income- In computing net income there shall be allowed as deductions -
>
> x x x x
>
> "(c) Taxes:
>
> x x x x
>
> "(2) Limitations on deductions.-
>
> x x x x
>
> "(B) In the case of a citizen of a foreign country residing in the Philippines whose income from sources within such foreign country is not taxable under this Title, only that portion of the taxes paid to such foreign country which corresponds to his net income taxable under this Title shall be allowed as deduction." (Underscoring supplied.)

As correctly pointed out by the petitioner, paragraph (B) of subsection (2) of Section 30(c) of the Tax Code is not applicable to the instant case. This provision clearly refers to a citizen of a foreign country residing in the Philippines whose income from sources within such foreign country is not taxable under the Philippine Income Tax Law. In the case at bar, the U.S. income of the petitioner is subject to the Philippine income tax as he declared said U.S. income in his 1950 income tax return and paid the corresponding tax thereon. On this point, the respondent must have realized the worthlessness and lack of merit of his argument for disallowing the questioned U.S. taxes based on and pursuant to Section 30(c)(2)(B) of the Tax Code, for in his extensive memorandum filed with this Court (pp. 25-34, CTA rec.) he never mentioned said provision of law although it was his only reason and ground for disapproving the disputed deductions claimed by the petitioner.

Let us now proceed to determine whether or not the deductions claimed by the petitioner under the heading "U.S. Taxes" are in fact taxes within the purview of Section 30(c) of the National Internal Revenue Code.

Section 80 of the Income Tax Regulations provides in part as follows:

> "Import duties paid to the proper customs officers, and business, occupation, license, privilege, excise and stamp taxes and any other taxes of every name or nature paid directly to the Government of the Philippines or to any political subdivision thereof, are deductible. The word 'taxes' means taxes proper and no deductions should be allowed for amounts representing interest, surcharge, or penalties incident to delinquency. Postage is not a tax. Automobile registration fees are considered taxes. Taxes are deductible as such only by the person upon whom they are imposed. Thus, the merchants' sales tax imposed by law upon sales is not deductible by the individual purchaser even though the tax may be billed to him as a separate item." (Underscoring supplied.)

In the light of the above quoted provisions of the Income Tax Regulations, and applying the same to the case at bar, we hold that the following disputed items are taxes and should be allowed as deductions from petitioner's gross income in computing his net income for the year 1950:

U. S. stamp tax	₱ 7.70
Auto license	68.00

Moreover, as regards the two (2) items mentioned above, the respondent admits that they are taxes (pp. 6-7, Memorandum for the Respondent, pp. 25-34, CTA rec.) and that the same were paid by the petitioner to the United States and/or the State of California. (Par. 5, Stifacts.) And for the same reason, the item: "California personal property tax .... ₱39.70" should also be allowed as a deduction inasmuch as the respondent admits that it is a tax and the same was paid by the petitioner to the State of California.

Again, interpreting and applying the same provisions of Section 30 of the Income Tax Regulations to the instant case, the Federal excise tax on automobiles and the California "sales tax imposed by law upon sales are not deductible by the individual purchaser even though the tax may be billed to him as a separate item". The reason is simple. The Federal excise tax on automobiles and the sales tax are imposed by law on the manufacturer or seller and not on the buyer or purchaser. (P-H Federal Taxes, Vol. 2, par. 13, 247, 1962 Edition; A. Soriano y Cia. vs. Collector of Internal Revenue, G.R. No. L-5896, Aug. 31, 1955.) Hence, those taxes are direct liabilities of the former and not the latter. Likewise, the hotel tax in the amount of ₱15.20 should not be allowed as a deduction inasmuch as a hotel tax is a direct and personal obligation of the operator and not of the hotel guest. Taxes may be deducted as such only if they represent a liability of the taxpayer. (Mertens, Law on Federal Income Taxation, Vol. 5, Chap. 27, p. 6, 1956 Edition.)

The hunting and fishing license in the amount of ₱22.00 is not a tax and therefore is not deductible from petitioner's gross income. It is a fee representing payment for a limited privilege, i.e., to hunt and to fish. The same is true of a passport fee. It is the payment for the privilege to enter or leave a port, or to pass into or through a country. (Mertens, Law on Federal Income Taxation, Vol. 5, Chap. 27, pp. 19-20.)]

With regard to the other deductions claimed by the petitioner under the heading "U.S. taxes", we deem it not necessary to discuss the same since they were not admitted by the respondent or proved by the petitioner that the latter actually paid for them to the United States and/or the State of California.

In resumé, there is due from petitioner Robert L. Janda, the sum of ₱516.00 as deficiency income tax for the year 1950, computed as follows:

Net taxable income as per adjustment and after allowing as a deduction the real property tax (₱380.51) paid to the State of California		₱135,141.01
Deduct:		
U.S. stamp tax	₱ 7.70	
Auto license	68.00	
California personal property tax	39.70	115.40
Net taxable income		₱135,025.61
Tax due thereon		₱ 55,584.00
Less: amount originally assessed and paid		54,300.00
Deficiency income tax		₱ 1,284.00
Less: amount paid on the deficiency (See p. 24, BIR rec.)		₱ 768.00
AMOUNT STILL DUE		₱ 516.00

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby modified, and petitioner Robert L. Janda is ordered to pay the Commissioner of Internal Revenue the sum of ₱516.00 as deficiency income tax for the year 1950, within thirty (30) days from the date this decision becomes final.

If any amount of the tax is not paid within the time prescribed above, there shall be collected a surcharge of 5% of the tax unpaid, plus interest at the rate of 1% a month from the date of delinquency to the date of payment, provided that the maximum amount that may be collected as interest shall not exceed the amount corresponding to a period of three (3) years. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, July 16, 1962.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge