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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTONIO TAMBUNTING Y HIJOS,
INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4071

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

10/28/88

D E C I S I O N

The case involves the disallowance of certain expenses claimed in petitioner's income tax return for the taxable year 1976.

Petitioner domestic corporation engaged in pawnshop business was assessed under respondent's letter of demand dated March 25, 1982 for the sum of P212,967.34 as deficiency income tax for the year 1976, to wit:

Net income (loss) per return		(P 12,622.00)
Add: Disallowances:		
Interest and bank charges	P348,256.00	

	Inventory loss	5,323.00	
	Salaries, wages & allowances	14,885.00	
	Rent expense	5,962.00	
	Depreciation	17,860.00	
	Professional & technical fees	26,399.50	
	Repairs & maintenance	24,840.50	
	Office supplies	10,466.50	
	Communication fee	9,864.00	
	Medical expense	11,075.00	
	Transportation	1,186.00	
	Janitorial expenses	1,287.00	
	Amortization goodwill	2,000.00	
	Miscellaneous	4,819.00	484,223.50
Taxable income			P471,601.50
Amount of tax due thereon			P155,061.00
Less: Tax paid per return			5,084.00
Deficiency income tax			P149,977.00
14% int. (42% maximum)			62,990.34
Total amoun.. due and collectible			P212,967.34

On May 5, 1982 petitioner protested/requested for the reconsideration of the assessment but was denied by the respondent in a letter dated May 5, 1986 due to the petitioner's failure to meet the substantiation requirements. Hence, this petition for review filed on June 13, 1986.

It appears that the tax litigation arose out of the respondent Commissioner's disallowance of claimed deductions for an aggregate amount of P484,223.50, resulting in the reduction of the tax base and consequential deficiency income tax of P212,967.34, inclusive of interests.

Turning to the case at hand, petitioner or counsel repeatedly failed to appear in the three (3) consecutive scheduled hearings in this court and as a consequence the case, upon respondent's motion, was submitted for decision on the basis of the pleadings and records obtaining.

The records show that the controverted assessment had for its basis the revenue examiner's report of investigation relevantly summarized as follows:

> The claimed interests and bank charges totalling P348,256.00 were not substantiated and therefore disallowed. The contracted loans which approximated four times more than the stockholder's equity were but means of increasing capital, such that -
>
> > Loans secured by a thinly capitalized corporation could only mean additional capital and if each loan had been secured under the names of its affiliates/principal officers collateralized also by them, then it is tantamount to investing additional capital to the corporation. Hence, each amount of capital disguised as loans should not be interest-bearing. Likewise, payments

of interest on each disguised loans even qualify as dividends being distributed to the affiliates/officers (supposedly lending loans to the corporation instead of being regular investors/stockholders).

Some of the expenses were totally disallowed, i.e., inventory loss of P5,323.00 and the amortization-goodwill of P2,000.00 for failure of petitioner to substantiate the same. Other expenses deducted in the Income Statement were allowed only to the extent of 50% of the amount claimed such as the following:

	Amount deducted in the Income Statement	One-half (1/2) Disallowed
Professional & Technical fees	P52,799.00	P26,399.50
Repairs & Maintenace	49,681.00	24,840.50
Office supplies	20,933.00	10,466.50
Communication expense	19,728.00	9,864.00
Miscellaneous expense	9,638.00	4,819.00

The rest of the remaining disallowed expenses were computed on the basis of the difference of the amounts claimed as deductible expenses for the year 1976 as compared to the previous year 1975, to wit:

	1976	1975	Disallowed (Difference)
Salaries, wages & allowances	P120,492.00	P105,607.00	P14,885.00
Rent expense	69,846.00	63,884.00	5,962.00
Depreciation	54,331.00	36,471.00	17,860.00

Medical expense	12,128.00	1,053.00	11,075.00
Transportation	4,157.00	2,971.00	1,186.00
Janitorial expense	2,410.00	1,123.00	1,287.00

The presumption is the expenses incurred in 1975 remained the same for the succeeding year, considering that the accounting record for the year 1976 was not presented for examination, then any increase in the amount claimed cannot be accounted for.

Apparently the examiner's report made as close as an approximation as it can, bearing heavily if it chooses upon petitioner whose inexactitude is of its own making. As such, the report deserves the credence that should normally be accorded in the absence of contrary evidence. And, not that the examiner's credentials are impeccable but to his favor, must be conceded the presumption of regularity in the performance of official duties **(Sec. m-5, Revised Rules of Court; U.S. v. Escalante,** 36 Phil. 743), which has not been disproved by any affirmative evidence of irregularity or unlawful conduct. (**Prima Business Machines, Inc. v. Commissioner of Internal Revenue,** CTA Case No. 2990, August 31, 1981.) Thus, similarly held, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise (**Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.**, 145 SCRA 671); and an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. (**Gutierrez v. Villegas**, 8 SCRA 527.) Accordingly, we feel compelled to affirm the import and force of the report of findings which may not be suffered to petrify in futility.

In the case at bar, petitioner failed to discharge its burden, administratively and judicially, having waived its right to present evidence in support of its claimed deductible expenses. This Court cannot be expected to sanction an expedient unsustainable either by operation of law or applicable settled principles. The proscriptions of securing the integrity of the collection of lawful dues are no mere ingenuous sophistries conjured out of some quirky insights but are tinged with strong issues of public policy to prevent fraud upon the revenue lest the cornerstone of effective collection be placed in the quicksand of self-interest. (**Samhwa Co. Ltd. v. Commissioner of Customs**, CTA Case No. 3099, July 31, 1981.) It may be necessary to repeat what the Supreme Court said in the **Bonifacia Sy Po** case (G.R. L-81446, August 18, 1988) which so plainly apply to the case at bar, that -

> Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession. Otherwise, if, the taxpayer confines himself to proving that the assessment is wrong, the tax court proceedings would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession.

By all of the foregoing, We hesitate to further fashion and issue into a satisfatorily settled legal situation.

WHEREFORE, petition is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, October 28, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals