REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FERNANDEZ HERMANOS, INC., Petitioner, Oct. 31/70

versus CTA CASE NO. 1494

COMMISSIONER OF INTERNAL REVENUE, Respondent.

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DECISION

This is an appeal from the revised decision of respondent Commissioner of Internal Revenue dated August 17, 1970 assessing against petitioner Fernandez Hermanos, Inc., deficiency income tax for the year 1958, in the sum of ₱22,893.18, including interest, pursuant to Section 51(d) of the National Internal Revenue Code, as amended by Republic Act No. 2343.

Petitioner, a domestic corporation with principal office at No. 205 Juan Luna St., Binondo, Manila, filed its income tax return for the year 1958 on April 15, 1959, claiming as deductions the following:

(a) 1958 Losses in Casiguran mines	₱37,470.30
(b) 1958 "Contractual rights" . . .	48,481.62
(c) 1958 Losses in Hacienda Dalupiri	87,299.90
(d) Depreciation of buildings. . .	18,905.05
(e) Depreciation of equipment. . .	1,902.79

which deductions were disallowed by respondent, resulting in an assessment against petitioner in the sum of ₱64,117.66, representing deficiency income tax for the year 1958 and interest, computed as follows:

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Net income per return	₱140,321.62
Add: Unallowable deductions:	
(1) Casiguran mine expense to be capitalized	37,470.30
(2) Amortization of contractual rights	48,481.62
(3) Loss in the operation of Hacienda Dalupiri	87,299.90
(4) Depreciation of buildings (excessive)	18,905.05
(5) Depreciation - Office equipment (excessive)	1,902.79
Net income per investigation	₱334,381.28
Tax due thereon	₱ 85,627.00
Less: Amount already assessed	31,290.00
B a l a n c e	₱ 54,337.00
Add: ½% monthly interest from 6-20-59 to 6-20-62	₱ 9,780.66
TOTAL AMOUNT DUE & COLLECTIBLE	₱ 64,117.66

On February 25, 1964, petitioner filed its petition for review with this Court, alleging that respondent has no basis in law or in fact to demand payment from petitioner of the said deficiency income tax for the year 1958. And on April 24, 1964, respondent filed his answer to the petition.

Pending the appeal, respondent reinvestigated petitioner's tax liability and revised the assessment in the light of the decision of the Supreme Court in the cognate cases entitled "Fernandez Hermanos v. Commissioner of Internal Revenue," G.R. Nos. L-21551, L-21557, L-24972 and L-24978, September 30, 1969. In line with said decision, respondent determined petitioner's tax deficiency, including interest, at ₱22,893.18, itemized as follows:

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Net income per investigation		₱334,381.28
Less: Allowable deductions:		
(1) Losses from Casiguran mines	₱37,470.30	
(2) Losses from operation of Hacienda Dalupiri	87,299.90	124,770.20
Net income per investigation		₱209,611.08
Income tax due thereon		₱ 50,691.00
Less: Amount already assessed		31,290.00
Balance of tax due		₱ 19,401.00
Add: ½% mo. int. from 6-20-59 to 6-20-62		3,492.18
Total amount due and collectible		₱ 22,893.18

In the aforesaid revised assessment, respondent agreed to allow deduction of losses sustained in the operation of the Casiguran mines and the Hacienda Dalupiri, but has refused to allow deduction of the item denominated as "Contractual rights" (₱48,481.62); depreciation of buildings (₱18,905.05); and depreciation of equipment (₱1,902.79).

The issues raised by the parties are:

1. Whether or not the right of the Government to assess and collect the deficiency income tax in question has already prescribed; and

2. Whether or not respondent is justified in disallowing the aforesaid items of deduction.

As to the first issue, petitioner contends that the right of the Government to assess and collect the said income tax liability of petitioner has already prescribed. However, respondent maintains a contrary view.

Respondent's stand is well taken. Distinction should be made between the right of the Government to assess and its right to collect a deficiency income tax. The right to assess may be exercised within five years from the date the return was filed or was due, and the right to collect, within five years from the date of assessment. (See Secs. 331 and 332, Rev. Code.)

In the instant case, the right of respondent to assess began on April 15, 1959, when the return was filed. Since the deficiency income tax was first assessed on January 31, 1964, it is clear that the assessment was seasonably made. The five-year period within which to collect the tax began on January 31, 1964, the date of assessment. The appeal to this Court from the decision of respondent filed by petitioner on February 25, 1964, barely one month from the date of assessment, constitutes judicial action for collection of said deficiency income tax. (See Alhambra Cigar & Cigarette Mfg. Co. v. Collector, G.R. No. L-12026, May 29, 1959, 105 Phil. 1337, unpub.) Consequently, the right to collect the questioned deficiency income tax has likewise not prescribed.

We now proceed to the disputed items. The first of these items is the sum of ₱48,481.62, representing the amortization of "contractual rights" for the year 1958. It amounts to one-fifth of the total acquisition cost of the Busuanga Mines. The disallowance of this item on the ground that no evidence was shown to justify the deduction is justified. This issue has already been finally decided by this Court in Fernandez Hermanos v. Commissioner of Internal Revenue, CTA Case No. 1389, August 2, 1965, which was affirmed by the Supreme Court in G.R. Nos. L-21551, L-21557, L-24972 & L-24978, September 30, 1969:

> "The sole basis of petitioner in claiming the amount of ₱48,481.62 as a deduction was the memorandum of its mining engineer (Exh. I, pp. 31-32, CTA rec.), who stated that the ore reserves of the Busuanga Mines (Mines transferred by the Palawan Manganese Mines Inc. to the petitioner) would be exhausted in five (5) years, hence, the claim for ₱48,481.6 2 or one-fifth (1/5) of the alleged cost of the mines corresponding to the year 1957 and every year thereafter for a period of 5 years. The said memorandum merely showed the estimated ore reserves of the mines and its probable selling price. No evidence whatsoever was presented to show the produce mined and for how much they were sold during the year for which the return and commutation were made. This is necessary in order to determine the amount of depletion that can be legally deducted from petitioner's gross income. The method employed by petitioner in

making an outright deduction of 1/5 of the cost of the mines is not authorized under Section 30(g)(1)(B) of the Revenue Code. Respondent's disallowance of the alleged 'contractual rights' amounting to ₱48,481.62 must therefore be sustained.") (Emphasis supplied.)

The second disputed item is the amount of ₱18,905.05 representing the depreciation allowance of certain buildings in the total sum of ₱55,524.50. The deduction of this item was partially denied by respondent on the ground that it was excessive.

The records show that the examiner of the Bureau of Internal Revenue estimated the life span of the buildings at 20 years, and fixed the depreciation rate thereof at 5% per annum. On the other hand, petitioner appraised their useful life at a little more than 13 years, and the depreciation rate thereof at 7.58% per annum. Since petitioner failed to adduce proof that the useful life of the buildings is other than that estimated by respondent, we are constrained to sustain the disallowance made by the latter.

The third disputed item is the sum of ₱1,902.79, representing depreciation of equipment. Petitioner estimated the useful life of the equipment at a little less than 5 years and the depreciation rate thereof at 19.77%; whereas, respondent estimated the useful life at 10 years and a depreciation rate of 10%. Again, there is no proof of the correctness of the claim of petitioner. In the absence of such proof, we are constrained to sustain the disallowance made by respondent.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed *in toto* and petitioner is hereby ordered to pay the sum of ₱22,893.18 as deficiency income tax for 1958, plus surcharge and interest, subject to the limitations imposed by Section 51 of the Revenue Code, as amended by Republic Act No. 2343. Without pronouncement as to cost.

SO ORDERED.

Quezon City, October 31, 1970.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge