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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLD CREEK MINING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE No. 1497

April 24/67

BENJAMIN M. TABIOS, as COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue dated February 7, 1964, holding petitioner liable for the payment of the sums of ₱1,416.00 and ₱1,557.60, allegedly representing deficiency income tax and interest for the years 1958 and 1959, respectively.

Petitioner is a mining corporation duly organized and existing under the laws of the Philippines. Before the last war, it operated its mines which are located in Bontoc, Mountain Province. A few years thereafter, petitioner entered into a royalty agreement with the Benguet Consolidated Mining Company (Benguet for short) for the operation of said mines (pp. 4-5, t.s.n.).

Petitioner has more or less 260 stockholders (p. 10, BIR rec.) and its income for the years in question was solely derived from royalties it received from Benguet and interests on bonds of the Meralco (pp. 1-2, 10-11, BIR rec.; pp. 18, 28-29, t.s.n.).

From 1950 to 1964, Mr. J. A. Wolfson was the president of petitioner and also one of its directors (p. 6, t.s.n.). In a resolution dated November 13, 1956, petitioner's board of directors, among others, authorized the payment of the sum of ₱500.00 beginning January 1, 1957 to Mr. Wolfson for his services as its attorney and for providing office space and clerical assistance (See Exh. C-1, p. 34, BIR rec.). Atty. Wolfson conducted the affairs of petitioner in a rented office in Manila where he was assisted by 3 clerical employees (pp. 9-10, t.s.n.).

On March 1, 1959 and March 1, 1960, petitioner filed its income tax returns for the years 1958 and 1959, respectively, and claimed as deductible yearly expense the amount of ₱6,000.00 or ₱500.00 a month, allegedly representing "legal fees" paid to Atty. Wolfson (pp. 1 & 11, BIR rec.). On January 15, 1964, respondent assessed and demanded from petitioner the sums of ₱1,416.00 and ₱1,557.60 as deficiency income tax and interest for the years 1958 and 1959, respectively, as a result of the disallowance of petitioner's yearly "legal fees" of ₱6,000.00 (Exhs. A & B, pp. 31-32, BIR rec.). Petitioner, through counsel, protested these assessments in its letter dated February 3, 1964 and asked for their cancellation (Exh. C, pp. 35-36, BIR rec.). In a letter dated February 7, 1964, respondent denied petitioner's request for cancellation of the said assessments and reiterated his previous demand (p. 40, BIR rec.). From this denial, petitioner instituted the instant appeal on February 29, 1964.

In his answer to the petition for review, respondent's counsel seeks the affirmance of the appealed decision and, in addition to the interest sought therein, prays for the imposition of surcharge on the deficiency taxes (pp. 8-10, CTA rec.).

The issues raised for our consideration are purely of law, namely:

1. Whether or not the amount of ₱6,000.00 paid yearly to Atty. Wolfson as "legal fees" is deductible from petitioner's gross income pursuant to Sec. 30 (a)(1) of the Revenue Code; and in the negative,

2. Whether or not the tax due thereon is subject to interest and surcharge.

Petitioner contends that the amount of ₱6,000.00 paid yearly to Atty. Wolfson is deductible from its gross income because it is an ordinary and necessary expense incurred in carrying on its trade or business. On the other hand, respondent questions its deduction on the ground that petitioner's activity is insufficient to constitute the carrying on of a trade or business.

The controlling provisions are found in Section 30(a)(1) of the Revenue Code which provide as follows:

> "SEC. 30. Deductions from gross income.- In computing net income there shall be allowed as deductions -
>
> (a) Expenses:
>
> (1) In general.- All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including reasonable allowance for salaries or other compensation for personal services actually rendered; x x x." (Underscoring supplied)

An expense to be deductible must comply with the following conditions: (1) ordinary and necessary; (2) paid or incurred within the taxable year; and (3) paid or incurred in carrying on a trade or business. (See Gutierrez v. Coll., L-19537, May 20, 1965; Coll. v. Phil. Education Co., 54 O.G. 2499.)

We agree with the contention of petitioner that the legal fee in the amount of ₱500.00 paid monthly to Atty. Wolfson is deductible from its gross income as ordinary and necessary expense incurred in carrying on its business.

The fact that petitioner had transferred to Benguet the operation and management of its mines does not mean that it had ceased to engage in business. Petitioner was principally organized to engage in the mining business and when it entered into a royalty agreement with Benguet, it merely allowed the latter to directly operate and manage the mines for the petitioner, and in consideration thereof, it was entitled to a percentage of the net receipts actually received from the sale of any marketable products. It still retained ownership over the mines. In view of this, petitioner as a corporation had to hire the services of Atty. Wolfson who, in turn, had to maintain a clerical staff to assist him to attend to the preparation of the corporation's income tax returns, books of accounts, stockholders' book, transfer books and correspondence. For these services he was paid ₱500.00 each month which although denominated "legal fees" actually included "reimbursement of out-of-pocket expenses like rentals, clerical help, stationeries, expenses for light and other services incurred by Atty. Wolfson for the account of Gold Creek Mining Corporation" (p. 9, t.s.n.). These so-called "legal fees" are therefore expenses incurred in the carrying on of a trade or business.]

Respondent cites the cases of Higgins vs. Comm. of Int. Rev., 312 U.S. 212 and Continental Trading, Inc. vs. Comm., 3 AFTR 2d 923, in support of his stand. These cases are, however, not applicable to the case at bar. In the Higgins case, the taxpayer is an individual, whereas, in the case at bar, petitioner is a corporation. Hardly could there be a corporation that is not organized for business or profit except perhaps those organized for purely religious, charitable, cultural, etc., purposes under Sec. 27 of the Revenue Code. In the case of Continental Trading, Inc., the taxpayer is a foreign corporation seeking deduction of expenses in the U.S. which is unlike the case of petitioner herein.

Respondent in his memorandum limits his objection to the deduction of ₱6,000.00 as yearly legal fee solely on the ground that petitioner is not engaged in trade or business. But the evidence shows that the expense was not exclusively for legal services of Atty. Wolfson. The expense was incurred mainly for office rental and clerical help. No corporation can do business without an office and personnel. It cannot, therefore, be denied that the expense in question is ordinary and necessary in carrying on the business or in earning the income of the taxpayer.

Having decided the first issue adverse to respondent, it becomes unnecessary for us to pass upon the other issue.

WHEREFORE, the decision appealed from is hereby reversed. Petitioner is declared not liable for deficiency income tax and interest for the years 1958 and 1959. Without pronouncement as to costs.

SO ORDERED.

Quezon City, April 29, 1967.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge Estanislao R. Alvarez did not take part.