REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CASAS AGENCIAS DE EMPENOS DE
ANTONIO L. TAMBUNTING E HIJOS
INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3367

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

10/20/91

D E C I S I O N

This case involves a deficiency income tax assessment for 1969 in the amount of P57,359.39 inclusive of interest, computed as follows:

1969

Net income per return----------		P 7,046.00
Add:	Unallowable deductions:	
1.	1/2 of the operating expenses from January to June, 1969------------	83,118.79
2.	Car maintenance----------	2,227.24
3.	Representation expenses-	9,457.41
4.	Interest expense---------	17,689.02
5.	Insurance----------------	7,524.18
6.	Professional fee---------	10,546.00
7.	Advertising--------------	150.00
8.	Donations----------------	300.00
9.	Rent---------------------	3,600.00
10.	Officers compensation---	20,000.00
11.	Miscellaneous expenses--	574.60
12.	Cafeteria service--------	7,291.00
Net income per investigation---		P169,524.24
Tax due thereon----------------		P 54,333.00
Less:	Amount already assessed-	1,950.00
B a l a n c e ----------------		P 52,383.00
Add:	1/2% mo. int. fr. 4-16-70 to 11-15-71--------------	4,976.39
TOTAL AMOUNT DUE & COLLECTIBLE		P 57,359.39

The relevant material facts are simple.

Petitioner is a domestic corporation engaged in the pawnshop business. For the calendar year ending December 31, 1969, petitioner filed its corporate annual income tax return on April 15, 1970 showing a net income of P7,046.00 with the corresponding income tax of P1,950.00.

On November 29, 1971, petitioner received from respondent an assessment dated November 15, 1971 for deficiency income tax for the year 1969. Petitioner protested the assessment on December 2, 1971.

Meanwhile, respondent requested petitioner to submit evidence on the claimed deductions. In compliance with the request, petitioner submitted its Cash Disbursements Journal, Cash Receipts Journal, Journal and Ledger Book for the year covered by the assessment.

On October 10,1979, respondent informed petitioner that with the exception of the 1/2 operating expenses of P83,118.79 from January to June, 1969 petitioner still has to submit the necessary documents to support the rest of the disallowed items. (Exh. I, p. 22, CTA rec.) This notwithstanding, respondent denied the protest for failure of petitioner to submit the necessary documents to rebut the findings of the examiner. At the same time he demanded the payment of P57,359.39 as deficiency income tax for 1969 inclusive of interest. Respondent's final decision issued on June 23, 1981 was received by petitioner on July 18, 1981.

On August 17, 1981 the instant petition for review was filed seeking the review of respondent's decision and disputing the validity thereof.

For his part, respondent avers as a special and affirmative defense that the expenses claimed are not legitimate expenses under Section 30 (now Section 29) of the National Internal Revenue Code. He added that an expense in order to be deductible must be: (1) ordinary and necessary in nature; (2) directly incurred in carrying on a trade or business; (3) paid within the taxable year; and (4) duly supported by receipts. (Basilan Estate v. Commissioner of Internal Revenue, 21 SCRA 17; Visayan Cebu Terminal Co. v. Coll. of Internal Revenue, 108 Phil. 323). The burden is on the part of petitioner to prove entitlement to the claimed deductions.

The issue squarely presented is whether or not respondent properly disallowed the deductions claimed by petitioner.

All deductions claimed were allowable items of deductions pursuant to Section 30(a)(1), (b)(1), (c)(1), (f)(1), and (h) [now Section 29(a)(1), (b)(1), (c)(1), (f)(1), and (h) respectively] of the National Internal

Revenue Code. But the disallowances made were by reason of their being unsupported or purely personal expenditure prescribed by Section 31(a)(1) and (4) [now Section 30(a)(1) and (4)] of the same Code.

We will discuss the items disallowed by respondent in seriatim.

1. 1/2 of the operating expenses from January to June, 1969 in the amount of P83,118.79.

The first item disallowed by the respondent refers to 1/2 of the operating expenses incurred by petitioner from January to June, 1969 amounting to P83,118.79, itemized as follows:

Operating expenses Jan. to June, 1969	Exhibit	Amount Claimed	1/2 disallowed by the BIR
a. Interest expense	O-41	P 95,284.16	P 48,717.08
b. Professional and Technical fees	O-43	9,614.75	4,805.37
c. Rent expense	O-45	8,680.00	4,340.00
d. Representation	O-46	14,233.17	7,116.58
e. Office Supply	O-48	2,562.93	1,281.46
f. Employees Welfare and Subsistance	O-49	17,368.66	8,684.33
g. Light and Water	O-52	883.72	441.86
h. Advertising	O-53	367.90	183.95
i. Insurance	O-54	8,235.14	4,117.57
j. Car maintenance	O-55	2,398.20	1,199.10
k. Donation	O-57	347.00	173.50
l. Communication	O-58	1,248.85	624.42
m. Miscellaneous	O-59	2,827.14	1,433.57
T o t a l		P164,051.62	P 83,118.79

In conducting his investigation, the examiner was unable to examine the vouchers pertaining to the operating expenses of petitioner from January to June, 1969. It was alleged that the vouchers were lost. Upon consultation with his supervisor the examiner applied the so called "jeopardy assessment" pursuant to Section 15 (now Section 16) of the National Internal Revenue Code.

Section 15 authorizes the respondent to assess the proper tax on the best evidence obtainable. For failure on the part of petitioner to file the required document the respondent shall amend the return based on such information as he can obtain through testimony or otherwise.

After careful examination of the vouchers, receipts, returned checks, cash disbursement journals, cash receipts journals and the ledger of petitioner from January to June 1969, the Court arrived at the following findings with respect to 1/2 of the operating expenses disallowed by respondent. This is better illustrated in tabular form, as follows:

Operating exp. Jan.-June 1969	Amount Claimed	Exhibits	Amount Proven	Disallowed Amount Per Court's Findings
a. Interest	P95,284.16	Q,Q-1 to Q-67, M, M-2 to M-7	P95,278.16	P 6.00
b. Prof. & Tech. Fees	9,614.75	S,S-1 to S-6	3,649.55	5,965.20

c. Rent	8,680.00	U,U-1 to U-11	8,680.00	-
d. Representation	14,233.17	P,P-1 to P-41	8,850.17	5,383.00
e. Office Supply	2,562.93	Y, Y-1 & Y-2	1,120.00	1,442.93
f. Employees Welfare & Subsistance	17,368.66	CC, CC-1 to CC-22	14,857.19	2,511.47
g. Light & Water	883.72	None	1/2 properly disallowed by respondent	441.86
h. Advertising	367.90	None	1/2 properly disallowed by respondent	183.95
i. Insurance	8,235.14	R,R-1 to R-11	The beneficiary of the life insurance of Antonio and Ramon Tambunting was established to be the company. [see Tsn, p.12, Nov. 8, 1988 Hearing] Therefore, all the P8,235.14 should be disallowed pursuant to Sec.31(a)(4) 1939 NIRC. [see discussion of disallowed	8,235.14

			insurance expense, infra.]	
j. Car main.	2,398.20	None	1/2 properly disallowed by respondent	1,199.10
k. Donation	347.00	T & T-1	140.00	207.00
l. Communication	1,248.85	AA, AA-1 to AA-12	1,115.95	132.90
m. Misc. exp.	2,827.14	W,W-1 to W-12, M, M-2 to M-7	1,538.91	1,288.23

TOTAL AMOUNT DISALLOWED BY THE COURT PERTAINING TO ITEM (1) .... P 26,996.78

2. Car maintenance of P2,227.24.

Of the total P2,282.54 car maintenance expense from July to December, 1969 (Exh. O-55), the BIR examiner disallowed P2,227.24. The examiner considered the use and maintenance of a Camaru and a Mercedes Benz one for personal use. He stressed that on the average petitioner consumes 50 liters of gasoline in two to three days time sometimes even less. (T.s.n., p. 14, Dec. 2, 1988 Hearing.) The consumption of 50 liters of gasoline for a pawnshop business was deemed to be unreasonable.

Petitioner averred that the cars were used to: service its clients in its various offices in Metro

Manila; transport its employees, supplies and valuable jewelry from one branch to another; allow its officers to supervise and inspect the operations of its branches and transfer cash and deposit money in the bank.

An examination of the car maintenance vouchers from July to December 31, 1969 and the receipts attached thereto showed that petitioner consumed on the average at least 50 liters of gasoline in a period of one to two days time. The examiner believes that there is no necessity of consuming on a daily basis at least 50 liters of gasoline in a pawnshop business even though petitioner operates 5 branches, namely: Azcarraga, San Juan, Pasay, Sampaloc or Bustillos, and Blumentritt. Ramon Tambunting, manager of one of petitioner's branches, admitted during trial that the car was not used solely for business. We quote the cross examination conducted by Atty. Dabu, respondent's counsel, to wit: (T.s.n., pp. 13-14, Nov. 8, 1988 Hearing.)

"ATTY. DABU

You stated that in the case of car maintenance expense most of these expenses were used by you for the business. Could you tell us the percentage of the use in the business and percentage for the personal use of this car?

A. Easily 90-95 percent for the business.

ATTY. DABU

Where do you live?

A. San Juan.

ATTY. DABU

You stated you have five branches. Tell us where these were located in 1969?

A. One is in Azcarraga. The other one in San Juan. One in Pasay. One in Sampaloc or Bustillos. One in Blumentritt.

ATTY. DABU

You said 90-95% in the average the car was used in connection with your business and 5-10% for personal?

A. Yes."

Although the car maintenance expense was properly documented by vouchers and receipts (Exhs. DD, DD-1 to DD-376) still by the admission of petitioner's witness, Mr. Ramon Tambunting, the Court finds that the expenses incurred for car maintenance was not solely for the business.

In the case of GUTIERREZ v. COLLECTOR OF INTERNAL REVENUE, No. L-19537, May 20, 1965, 14 SCRA 33, the Supreme Court held that "where there is no clear showing that the taxpayer's car was devoted more for the taxpayer's business than for his personal needs, but according to the evidence, the taxpayer's car was utilized both for personal and business needs, it is held that it is reasonable to allow as deduction one-half of the driver's salary, car expenses and depreciation."

In the case at bar, petitioner admitted that at least 90-95% of the time the car was used for business purpose and 10-15% for personal use. The 50 liter consumption in a day or two would be unreasonable even if petitioner maintains and operate 5 branches in Metro Manila considering the proximity of these branches with one another. No other proof was presented by petitioner to show that the car was used more in the business other than the testimony of Mr. Ramon Tambunting. In line with the Gutierrez case, supra., only 50% of P2,282.54 or P1,141.27 should be disallowed. The other half should be allowed as a valid and legitimate business expense.

3. Representation expense of P9,457.41.

Petitioner's representation expense from July to December, 1969 amounted to P13,211.90 (Exh. O-46). P9,457.41 was disallowed by the examiner for the simple reason that the chits covering this expenditure were mostly spent by Ramon Tambunting in places like the Sheraton, El Bodegon, Selecta and the like. An example of disallowed representation expenses paid by Ramon Tambunting include those paid to the Manila Polo Club, Tres Hermanas, and Diners Club. The examiner considered them purely personal expenditures of Ramon Tambunting.

Petitioner claims that representation expenses were incurred for the promotion of goodwill, entertainment of valued clients, creditors and potential investors, and for business conferences with the managers of its various branches as well as other pawnshop operators. Aside from being reasonable, all these were allegedly spent in relation to the active conduct of petitioner's business.

Miss Rosario Chua, petitioner's accountant, testified during the hearing that the representation expenses were spent by its owners and manager, Antonio and Ramon Tambunting, respectively. It covers expenses incurred during their meetings with valued clients and other pawnshop brokers. (T.s.n., pp. 5-6, Nov. 15, 1985 Hearing.)

Again from the testimony of Mr. Ramon Tambunting We gather that in 1969 he openly campaigned and invited non-members to join the Chamber of Pawnbrokers of the Philippines an association of which he was a director and officer. He added that the expenses incurred for representation were necessary since it contributed to the goodwill of the business. (T.s.n., p. 16, Nov. 8, 1988 Hearing.)

Representation expenses in order to be deductible as a business expense must be ordinary and necessary; paid or incurred in carrying on a trade or business; and they must be reasonable. It must be shown that the expenditures were made to promote the business of the taxpayer.

A close scrutiny of the vouchers and receipts showing representation from July to December, 1969 revealed that the examiner only allowed expenses paid to the Chamber of Commerce of the Philippines, the Chamber of Pawnshop Brokers of the Philippines and some minimal amounts spent in a few restaurants. All the rest were disallowed for the second half of 1969.

Petitioner's income statement for 1969 showed that of its gross income of P402,376.00 it deducted P27,445.00 representation expense (p.23, BIR rec.). This amount is not even more than 7% of its gross income. Therefore, the requirement of its being reasonable has been complied with.

Likewise, petitioner presented documentary evidence to prove that the amounts spent for representation for July to December, 1969 were duly supported by receipts issued by the entities to which the payments have been made. The documents consisted of vouchers, invoices, some returned checks, and cash disbursement journals (Exhs. EE, EE-1 to EE-487, K and L).

Furthermore, petitioner's accountant and Mr. Ramon Tambunting both testified that the amounts disallowed were indeed spent during meetings with clients, officers and other pawnshop brokers. Hence, this is an ordinary business expense.

However, this does not mean that We are allowing all the representation expenses claimed from July to December of 1969 which were fully substantiated by receipts. It is fundamental that representation expenses in order to be deductible must be related to the conduct or furtherance of the taxpayer's business. Expenses incurred for the purchase of pajamas, rollete, mop, spam, bread, red eggs and flowers cannot be considered a valid and legitimate business expense. Thus, for being personal expenditures the following representation expenses from July to December, 1969 were properly disallowed by the examiner:

Date	Particulars	Voucher No.	O.R. No.	Exhs.	Disallowed Amount Per Court's Findings
7-07-69	Rustan's - 1 set pajama 1 set pajama	17997A	9247	EE-12 to EE-14	P 51.21
7-12-69	Drug Store & Cosmetics - 1 Bottle Min. Rollete	18039A	2141	EE-38 & EE-40	3.80
7-17-69	J. Bechaves - 1 Doz. Roses	18064A	32517	EE-52 & EE-53	12.00
7-21-69	Brinton Shoe 1 Pair Saw Patch 2 CB Hash	18085A	11803 29975	EE-59 to EE-61	7.50
7-22-69	Rosana Store - 1 can spam 1 pc. pan	18088A	1512A	EE-62 & EE-63	4.50
7-30-69	J. Bechaves - 1 vase - roses 1 vase - roses	18141A	151861	EE-86 to EE-89	24.00

9-06-69	Pepe's Store - 1 pc. mop	18406A	87463C	EE-237 & EE-238	1.80
10-6-69	Rosana Grocery 1 Spam 1 Tasty	18594A	1720	EE-308 & EE-309	4.20
10-18-69	Rosana Grocery 1 can spam 1 S. bread	18664A	1745A	EE-353 & EE-354	4.20
10-20-69	Bechaves - 2 Vases of Roses	18667A	Statement of Account	EE-355 to EE-358	30.00
11-05-69	Ambos Mundos Restaurant - Short Order Various 2 Itlog-Maalat & Calamansi	18760A	81490	EE-386 & EE-387	3.35
11-15-69	Rosana Grocery 1 can spam 1 loaf bread	18802A	1805	EE-400 & EE-401	4.20
11-24-69	Pepe's Store 1 rope	18847A	87663C	EE-416 & EE-417	0.50
	James Estreller - 1 Suit	18850A	10212	EE-419 & EE-420	108.00
11-25-69	Phil. Motor Asso. Mem. Dues	18860A	9412F	EE-425 & EE-426	50.00
	TOTAL REPRESENTATION EXPENSE FROM JULY-DECEMBER, 1969 DISALLOWED PER COURT'S FINDINGS				P 309.26

4. Interest expense of P17,689.02.

Respondent's examiner disallowed P17,689.02 out of P82,716.99 (Exh. O-41) interest expense from July to December 1969 even though supported by vouchers it appearing that no recipients were stated therein (Exhs. 3-a-1, 3-c-1, 3-f-1, 3-h-1, 3-i-1, 3-k-1, 3-l-1, and 3-p-1).

Petitioner claims that interests were paid to various banks. The cash disbursements journal and the cash receipts journal showed the banks to whom these interest payments were remitted. Likewise, payments of these interests also appear in the books of the recipients.

We agree with petitioner. The payees of interests were definitely named in the books of petitioner and in some returned checks as well as in the bank statements. This Court have examined carefully the books of accounts (cash disbursement journals, cash receipts journal and journal book) and ledger of petitioner. The vouchers, returned checks, statement of accounts and debit memos issued by the bank were also scrutinized. In the end the Court arrived at the following findings:

INTEREST EXPENSE PROVEN BY PETITIONER
FROM JULY TO DECEMBER, 1969

Date 1969	Exhibits (Proof)	Amount Proven in CDJ +	CRJ =	Interest Proven
July	FF, FF-1 to FF-19, K, K-39 to M-43, M, M-8, and O-41	P 14,319.91	P 4,087.50	P 18,407.41
Aug.	FF-21 to FF-30, K, K-46, L, L-2, M, M-9 and O-41	3,451.43	4,747.92	8,199.35
Sept.	FF-32 to FF-43, L, L-4 to L-6, L-9, M, M-10 and O-41	14,050.23	10,055.55	24,105.78
Oct.	FF-45 to FF-54, L, L-11,	4,232.67	1,715.42	5,948.09

	L-12, L-14, M, M-11 and O-41			
Nov.	FF-57 to FF-67, L, L-16 to L-20, M, M-12 and O-41	3,520.34	7,104.58	10,624.92
Dec.	FF-71 to FF-87, L, L-22, L-24, and L-27, M, M-13, N, N-8 and O-41	4,149.76	4,712.50	8,862.26

TOTAL INTEREST EXPENSE PROVEN FROM JULY TO DECEMBER, 1969 .... P 76,147.81

Petitioner have overcome the burden of proof with respect to P76,147.81 interest expense out of the P82,716.99 claimed for July to December, 1969. Logically, only P6,569.18 should be disallowed as interest expense for failure on the part of petitioner to substantiate this expense with receipts showing payments therefor.

5. Insurance expense of P7,524.18.

Premiums paid by petitioner on the insurance policy covering the life of its key officers Mr. Antonio Tambunting and Ramon Tambunting were treated by the examiner as a personal expense. Petitioner failed to explain in its protest why the insurance expense should be allowed as a deductible expense. Furthermore, it failed to present the life insurance policy when asked for by the examiner.

The whole amount of P7,524.18, appearing in the ledger (Exh. O-54) as insurance expense from July to December, 1969, disallowed by respondent are hereunder itemized as follows: (Exhs. GG-1 to GG-21)

Date	Voucher No.	Check No.	Payee	Amount
7-19-69	18080 A	FEBTC 661712	Philam Life	P1,127.06
7-24-69	18106 A	FEBTC 661717	Philam Life	864.15
7-24-69	18107 A	FEBTC 661718	Philam Life	737.36
7-28-69	18126 A	FEBTC 661721	BIA Inc.	386.28
7-28-69	18127 A	FEBTC 661722	BIA Inc.	277.76
9-01-69	18375 A	BOA 315417 A	Philam Life	812.50
10-16-69	18656 A	BOA 319689 A	Philam Life	905.06
10-24-69	18686 A	BOA 319692 A	Philam Life	737.36
10-24-69	18687 A	BOA 319693 A	Philam Life	864.15
12-01-69	18916 A	TMBC 31925	Philam Life	812.50
	T o t a l			P7,524.18

There is no dispute that the insurance expense incurred were premiums paid on the life of Antonio Tambunting (as Chairman of the Board) and Ramon Tambunting (as Stockholder-Manager). [T.s.n., pp. 6-7, Nov. 15, 1985 Hearing.] However, whether or not the same shall be deductible is determined by the beneficiary named in the life insurance policy.

Section 31(a)(4) of the 1939 National Internal Revenue Code is clear on this matter. It states:

> "SEC. 31. Items not deductible. - (a) General rule. - In computing net income no deduction shall in any case be allowed in respect of -
>
> x x x x x x x x x
>
> (4) Premiums paid on any life insurance policy covering the life of any officer or

> employee, or of any person financially interested in any trade or business carried on by the taxpayer, individual or corporate, when the taxpayer is directly or indirectly a beneficiary under such policy.
>
> x x x x x x x x x."

Petitioner's witnesses gave contradictory statements during the trial. When called during the hearing, petitioner's accountant testified that although the insurance expense was personal the same should be allowed as a deduction from gross income since the beneficiary was the family of the insured. (T.s.n., p. 11-12, Nov. 15, 1985 Hearing.) However, when Mr. Ramon Tambunting was presented in the witness stand he contradicted the previous testimony of the accountant saying that the company was the beneficiary. Failure on his part to present the policy was due its surrender to the insurance company when his father (Antonio) died. (T.s.n., p. 12, Nov. 8, 1988 Hearing.)

We give more credence and weight to the testimony of Mr. Ramon Tambunting stating that the beneficiary was the company. Taking into consideration the proximity by blood relation of the former to the deceased Antonio Tambunting being the son of the latter. We quote Ramon Tambunting's relevant testimony as follows: (T.s.n., p. 12, Nov. 8, 1988 Hearing.)

"ATTY. MACASAET

The witness for the Commissioner likewise disallowed payment of premiums for a policy taken upon the life of Mr. Antonio Tambunting on the ground that it was never shown who the beneficiary was.

A. The beneficiary was the company.

We were paying the premium and the beneficiary is the company.

ATTY. MACASAET

Do you have any evidence to show that?

A. When my father passed away, we surrendered the policy so they could give us the insurance."

In fact petitioner completely ignored this item of disallowance in his protest filed with respondent. No mention was made in the protest letter regarding the disallowed insurance expense. Another factor was its failure to present the life insurance policy at the time of the investigation. The policy could not have been surrendered as yet since at that time the insured was still alive there being no claim to speak of. Pursuant to Section 31(a)(4) of the 1939 National Internal Revenue Code and Sections 65 and 121 of Revenue Regulations No. 2, the insurance expense of P7,524.18 was properly disallowed. In the same manner and for the same reasons, this Court disallowed in full the amount of P8,235.14 claimed as insurance expense from January to June, 1969.

6. Professional fee
of P10,546.00.

This refers to doctor's fees paid by Antonio Tambunting to Dr. Busuego and Dr. Tanco. The examiner maintains that doctors fees do not form part of petitioner's operating expenses. Instead it should be treated as a return of capital investment chargeable against the surplus account as the share of Mr. Antonio Tambunting.

Petitioner claims that this expense represents amounts paid for professional services rendered by the accountants, lawyers, and doctors of the firm. The doctors fees cover medical services rendered by Dr. Busuego and Dr. Tanco to one of the managers seriously injured in an accident while in the performance of his duties.

A total of P18,269.00 professional fees for July to December, 1969 was claimed by petitioner (Exh. O-43). An examination of the worksheet prepared by the examiner shows that the sum of P10,546.00 was disallowed for the period July to December, 1969, to wit:

Date	Particulars	Voucher No.	Amount	Exhibits
7-17-69	No particulars-Payees name not indicated.	18066A	P 724.00	HH-15 & HH-16
7-22-69	No particulars-Payees name not indicated.	18090A	20.00	HH-19 & HH-20

7-22-69	C.N.Enterprises FEBTC Check No. 661713	18091A	150.00	HH-21 & HH-22
7-24-69	No particulars- Payees name not indicated	18103A	600.00	HH-23 & HH-24
8-08-69	Payee - CIIA	18203A	1,088.00	HH-28 & HH-29
8-08-69	Payee - CIIA	18205A	794.00	HH-30 & HH-31
8-18-69	Payee-Dr. Ernesto Que for services rendered from 6-6-69 to 7-22-69	18275A	420.00	HH-43 & HH-44
9-16-69	Payee-Male Nurse for services rendered from 9-4-69 to 9-19-69	18463A	250.00	HH-60
9-24-69	Payee-Dr. Busuego for services rendered from April to Sept. 23, 1969	18512A	3,000.00	HH-61 & HH-62
9-24-69	Payee-Dr. Andres Reyes, Jr. for services rendered from April to July, 1969	18513A	2,000.00	HH-63 & HH-64
9-29-69	Payee-Jose W. Diokno (O.R.#3042) For Attorney's Fees	18536A	1,500.00	HH-65 to HH-67
	Total Disallowed		P10,546.00	

The attorney's fees of P1,500.00 (Exhs. HH-65 to HH-67) should be allowed as a deductible professional expense as it was paid to Atty. Jose W. Diokno for legal services rendered properly supported by official receipt. All other professional fees mentioned-above were properly disallowed by respondent.

The payments made to Mr. Antonio Tambunting's doctors (Ernesto Que, Busuego and Andres Reyes, Jr.) and male nurse were properly disallowed. Petitioner failed to present the medical report or diagnostic finding to describe the illness if job related or not. Petitioner only presented the protest letter marked as Exhibit H stating that the "professional fee of P10,546.00 represent professional services rendered by the accountants, lawyers and for medical services of Dr. Busuego and Dr. Tanco on account of injuries sustained by one of the managers who was seriously injured in an accident while in the performance of his duties." Ms. Rosario Chua and Mr. Ramon Tambunting pointed that the disallowed professional fees of P10,546.00 are doctor's fees paid for the medical expenses of Mr. Antonio Tambunting. (T.s.n., pp. 7-8, Nov. 15, 1985; p. 25, May 26, 1988 Hearings.) Their testimony standing alone is not sufficient to prove that the illness of Mr. Antonio Tambunting was indeed job related.

The rest of the professional fees were likewise properly disallowed. Petitioner failed to present the official receipts to support payment of professional fees. No description of the transaction whatsoever was indicated in the vouchers. Neither was there any named payee. Therefore, only P1,500.00 for attorneys fees should be allowed. The remaining amount of P9,046.00 was properly disallowed by respondent as professional fees from July to December, 1969.

7. Advertising of
P150.00.

For not being properly documented the examiner disallowed the advertising expense of P150.00 from July to December, 1969. For that period, the ledger shows an advertising expense of P1,342.40 (Exh. O-53).

Petitioner protested the disallowance claiming that the same was properly supported by vouchers and receipts. In its offer of evidence petitioner merely presented Voucher No. 18861 A (Exh. II-21) with an attached encashed check (TMBC Check No. 182029) dated November 25, 1969. The check was issued to Maryknoll College amounting to P150.00 (Exh. II-22). No receipt was presented to prove that the payment in favor of Maryknoll College was for advertisement unlike the other advertising expenses allowed by the examiner. Moreso, no explanation was stated in the voucher except that it was for advertisement.

Advertising expenses allowed by the examiner covered those paid to The Manila Times Publishing Co., Herald Publications, Inc., The Manila Chronicle, and Arnoldus Press, Inc. and Sacred Heart Nursery and Pre-School all of which were properly supported by official receipts attached to the vouchers. As a rule, Maryknoll College is not engaged in the advertising business. Hence, any payments made thereto without any explanation whatsoever or failure on its part to present the receipt describing the transaction would be fatal to petitioner's claim for deduction. There is no doubt cast on the disallowance of advertisement of P150.00.

8. Donations of P300.00.

Petitioner claimed a total of P650.00 for donation from July to December, 1969 (Exh. O-57). Again, for failure to substantiate P300.00 the same was disallowed by the examiner, broken down as follows: (Exhs. 3-O and 3-O-1)

Date	Voucher #	Amount	Exhibit	Official Receipts
12-11-69	19019 A	P100.00	JJ-20	none
12-11-69	19018 A	100.00	JJ-21	none
12-11-69	19017 A	100.00	JJ-27	none but with TMBC check # 213970 payee-White Cross (Exh. JJ-28)
T o t a l		P300.00		

Donation of P200.00 was properly disallowed since this was not properly substantiated by receipts. The checks issued for their payment were not attached to the vouchers although there was a note attached to these vouchers saying that those checks are still outstanding and can be seen from its records of January, 1970. Even then these checks were not presented as evidence by petitioner.

With respect to the White Cross donation of

P100.00 (Exh. JJ-27) this should have been allowed by respondent as a deductible expense. The check was encashed and attached to the voucher (Exh. JJ-28). The Court takes judicial notice of the fact that White Cross Inc. with office address at #276 Santolan Road, San Juan, Metro Manila is a non-profit charitable institution catering to children of indigent families, abandoned and neglected children from 0 to 8 years old in 1969 but at present caters to children from 0 to 6 years old.

9. Rent of P3,600.00.

Petitioner claimed P8,880.00 as rental expense from July to December, 1969 (Exh. O-45). It paid Mr. Dee C. Chuan P600.00 per month as rental for a property located at #932 Soler Street, Manila used as a bodega. It also rented an office space located at #710-712 C. M. Recto, Manila for P880.00 per month.

The rentals paid to Dee C. Chuan for a space in Soler Street, Manila were disallowed by the examiner. He opined that this was not incurred in connection with the business of the taxpayer. Petitioner's business establishment is located at #710-712 C.M. Recto, Manila and not in Soler. According to the examiner, keeping a bodega in Soler Street has no relation whatsoever with the pawnshop business. Instead of a bodega the proper depository of jewelry and important documents should be a safe.

Petitioner claims that the property rented in Soler St., Manila was used as a "bodega". Documents such as old pawn tickets and appliances pledged like refrigerators, radios, airconditioners, etc. were kept and stored in this bodega. Petitioner maintains this space not for the purpose of operating a pawnshop office but for the purpose of storing and keeping obsolete and bulky items pawned. The rent of P3,600.00 for a bodega should be, as alleged by petitioner, considered an ordinary and necessary business expense.

Generally, rental expense is deductible only if the payment was made for the use of property by the lessee for his trade or business. However, where it was established that the "bodega", as in this case, was necessary in the operation of petitioner's business the rentals paid for its use should be deductible.

Nothing was said about jewelry being kept in the "bodega" for the logical conclusion is that the same should be kept in a safe. As clearly established by testimonial evidence the "bodega" was used as warehouse for appliances pawned and old pawn tickets.

Rental expense was properly documented by vouchers with attached official receipts (Exhs. KK-2 to KK-4; KK-7 and KK-8; KK-11 and KK-12; KK-15 and KK-16; and KK-19 and KK-20). After satisfying proof of payments, We can fairly conclude that the lease of a bodega is necessarily connected with the pawnshop business of petitioner. The rent of P3,600.00 for a bodega in Soler Street, Manila from July to December, 1969 should be allowed.

10. Officers compensation of P20,000.00.

For the year 1969 (January - December), petitioner deducted from its gross income officers compensation in the amount of P32,000.00 (Exh. O-44 and p. 23, BIR rec.). But only P12,000.00 representing compensation paid to Mr. Ramon Tambunting was allowed as a deduction by the respondent.

The examiner alleged that there is only one stockholder (Mr. Ramon Tambunting) who works for the corporation. Compensation received by stockholders other than Ramon Tambunting was disallowed. Payments made to officers who do not work for the corporation should be treated as a return to capital investment.

Petitioner maintains that this was spent for the payment of personal services actually rendered by its officers. It stressed the reasonableness of the amount claimed adding that the amount paid to officers does not exceed those ordinarily paid for services rendered. It has no relation whatsoever with the stockholdings of the officers to warrant the conclusion that it should be treated as a corporate distribution of surplus profits. The test of deductibility of compensation payments is whether they are reasonable and are, in fact, payments for services rendered. (Exh. B-1, p. 37, BIR rec.)

In this case, the records show that petitioner pays compensation to four of its stockholders, namely: Ramon Tambunting, Ediliza Ongsiako, Edna Verzosa, and Bernadette Mendoza. Petitioner regularly pays their compensation net of withholding tax except for Ediliza Ongsiako who was never withheld income tax (Exhs. V, V-1 to V-7, LL, and LL-1 to LL-7).

The fact that compensation paid to Edna Verzosa and Bernadette Mendoza for 1969 was established by oral testimony plus proof of withholding of income tax are enough evidence to allow its deductibility. And, if respondent allowed compensation of P1,000.00 per month for Ramon Tambunting then with more reason should it allow compensation of P500.00 per month from January to August, 1969 and P349.99 per month from September to December, 1969 in favor of Edna Verzosa and Bernadette Mendoza who have actually rendered personal service to the corporation. At that time these amounts were considered reasonable. This was properly recorded in the books of petitioner (Exhs. K, K-7, K-12, K-19, K-25, K-32, K-38, K-44, L-3, L, L-9, L-14, L-20, and L-27).

Thus, compensations paid to Edna Verzosa and Bernadette Mendoza in the amount of P5,399.96 each or a total of P10.800.00 should be allowed.

On the other hand, payments made to Ediliza Ongsiako in the amount of P9,200.00 was properly disallowed considering petitioner's failure to withhold the corresponding income tax due for such payment. The renumerations paid by an employer to an employee (including officers) for services performed shall not be allowed as a deduction if the employer fails to deduct and withhold the tax required.

11. Miscellaneous expenses of P574.60.

According to the revenue examiner, no documents were presented to warrant the deductibility of P574.60 as miscellaneous expense under Section 30 of the Tax Code. The disallowed miscellaneous expenses totalling to P574.60 are itemized below, as follows:

Date	Particulars	Voucher #	Amount	Exhibits
8-23-69	Filipinas Bazar - pomada (OR# 958976)	18305 A	P 7.90	MM-24 & MM-25
9-01-69	Veluzar - I.D. of Ramon Tambunting (OR# 6713)	18372 A	40.00	MM-36 & MM-37
9-02-69	Beatriz Gen. Merchandise-shampoo (OR# 8182)	18382 A	6.50	MM-39 & MM-40
9-24-69	Esquire-various items sold to Maj. A.A.Quinto c/o UP (OR# 15847)	18511 A	245.00	MM-62 & MM-63

10-1-69	Pings Cosmetics- mum rolette (OR# 10479)	18569 A	4.00	MM-71 & MM-72
10-6-69	Fortune Magazine- Ramon Tambunting 2 yr. subscription	18596 A	119.70	MM-77 & MM-78
12-5-69	The Kodak Store - Ramon Tambunting various items (OR# 85804)	18959 A	151.50	MM-126 & MM-127
	T o t a l		P574.60	

The above-mentioned disallowed miscellaneous expenses were all supported by vouchers with attached official receipts. But a close examination of the official receipts would reveal that most of these expenses were for personal use such as pomada, shampoo and mum rolette. One receipt shows that the goods itemized were sold to one Maj. A. A. Quinto c/o of U.P., certainly not the petitioner in this case therefore non-deductible business expense.

However, We take exception to the following items which should be allowed as a deductible miscellaneous expense, to wit:

Date	Particulars	Voucher #	Amount	Exhibits
9-01-69	Veluzar - I.D. of Ramon Tambunting (O.R.# 6713)	18372 A	P 40.00	MM-36 & MM-37
10-6-69	Fortune Magazine- Ramon Tambunting	18596 A	119.70	MM-77 & MM-78
12-5-69	The Kodak Store - Ramon Tambunting (O.R.# 85804)	18959 A	151.50	MM-126 & MM-127
	T o t a l		P311.20	

Therefore, the sum of P311.20 should be allowed as miscellaneous expense and only P263.40 was properly disallowed by respondent.

12. Cafeteria service of P7,291.00.

The examiner disallowed P7,291.00 cafeteria services (Exh. O-50) for the whole year of 1969 believing this was spent not in connection with the business. Petitioner presented its July to December, 1969 vouchers showing a P25.00 daily cafeteria expense. No receipts were attached to these vouchers. Respondent's examiner also opined that the comida expense would not be tolerated if this was not a close corporation. (T.s.n., p. 25, May 26, 1988 Hearing.)

Meanwhile, petitioner's witness, Ms. Rosario Chua, explains that the company gives free lunch for all employees. (T.s.n., p. 7, Nov. 15, 1985 Hearing.) The comida represents expenditures for snacks and beverages given to its employees who rendered overtime services in various shops of petitioner (Exh. H).

After examining the vouchers presented by petitioner from July to December, 1969 totalling to P3,749.70 (Exhs. NN, NN-1 to NN-151), We have found that on the average petitioner has been claiming a P25.00 daily comida. The vouchers were all signed by various persons. As testified by petitioner's accountant, the company accommodates its employees by giving them free lunch as an incentive for them to stay in the office during lunch and break time. This practice is common to many companies. It is not unusual for a firm to give snacks in case of overtime work rendered by its employees nor is it excessive to give free lunch for the purpose of keeping them inside the office premises even during lunch break. By the very nature of a pawnshop business clients transact business at any time of the day. The amount of P3,749.70 cafeteria services from July to December, 1969 should be allowed.

With respect to the January to July, 1969 cafeteria services of P3,541.20, petitioner failed to present the vouchers pertaining to this period. Following respondent's policy of allowing 1/2 of the expenses claimed in a jeopardy assessment, the Court heretofore allows 1/2 of P3,541.20 or P1,770.60 cafeteria expense from January to June, 1969. Therefore, the total sum of P5,520.30 (P1,770.60 + P3,749.70) should be allowed for the whole year and only P1,770.70 was properly disallowed.

In summary, the Court finds petitioner liable for deficiency income tax for the year 1969, recomputed as follows:

1 9 6 9

Net income per return ------------	P 7,046.00
Add: Unallowable deductions:	
1. 1/2 of the operating expenses from January to June, 1969 --	26,996.78
2. Car maintenance -------------	1,141.27
3. Representation expenses -----	309.26
4. Interest expense ------------	6,569.18
5. Insurance -------------------	7,524.18
6. Professional fee ------------	9,046.00
7. Advertising -----------------	150.00
8. Donations -------------------	200.00
9. Rent ------------------------	-0-
10. Officers compensation -------	9,200.00
11. Miscellaneous expenses ------	263.40
12. Cafeteria service -----------	1,770.70
Net income per Decision ----------	P 70,216.77
Tax Due Thereon ------------------	P 17,554.00
Less: Amount already assessed ----	1,950.00
B a l a n c e -------------------	P 15,604.00
Add: 1/2% mo. int. fr. 4-16-70 to 11-15-71 -------------------	1,482.38
TOTAL AMOUNT DUE & COLLECTIBLE PER DECISION ---------------------	P 17,086.38

WHEREFORE, in view of the foregoing findings of this Court, respondent's decision dated June 23, 1981 is hereby MODIFIED. Petitioner Casas Agencias De Empenos De Antonio L. Tambunting E Hijos Inc. is ordered to pay respondent Commissioner of Internal Revenue the amount of P17,086.38 as deficiency income tax for the year 1969, plus surcharges and interest incident to delinquency until fully paid.

With cost against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 20, 1991.

ERNESTO D. ACOSTA
Associate Judge

WE CONCUR:

ALEX Z. REYES
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.

ALEX Z. REYES
Presiding Judge