REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WARNER BROS. (F.E.), INC.,
PHILIPPINE BRANCH,
Petitioner,

-versus - C.T.A. CASE NO. 4334

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

6/2/93

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D E C I S I O N

This case is an appeal to the decision of the respondent assessing the petitioner for alleged deficiency income tax, withholding tax at source on royalty expenses, three percent (3%) contractor's and fixed tax, inclusive of surcharge and interest for fiscal year ended November 30, 1979.

Petitioner is a foreign corporation duly licensed to engage in the local distribution of foreign films in the Philippines.

In a letter, dated November 24, 1988, which was received by petitioner on January 29, 1989, respondent assessed petitioner for the following alleged deficiency taxes, inclusive of interest and surcharge:

"Deficiency Withholding Tax at Source on Royalty Expense...	P113,987.42
Deficiency 3% Contractor's tax...	2,992.69
Deficiency Fixed Tax	244.87
T o t a l	P117,224.98"

(See Exh. C)

and then modified petitioner's alleged Deficiency Income Tax Assessment from P572,785.51 to only P30,824.86, computed as follows:

"Net Income per return	P2,128,757.13
Add: Unallowable Cost of Advertising accessories sold (rented)	48,709.25
	P2,177,466.38
Income Tax plus CDT	P 860,986.00
Less: Tax already assessed	841,503.00
Deficiency Income Tax	P 19,483.00
Add: 14% Interest (4/14/80-7/31/80)	801.47
20% Interest (8/01/80-4/15/83)Max.	10,540.39
TOTAL AMOUNT DUE AND COLLECTIBLE	P 30,824.86

(ibid)

And, since the letter of assessment was already considered by the respondent as "our final decision on this case" (ibid), petitioner thus filed this petition for review on February 8, 1989.

In opposing the assessed deficiency income tax of P30,824.86 based on the disallowance of "Cost of Advertising Accessories," petitioner submitted that "charges to cost of advertising accessories are allowable deductions from its gross income since these consists principally of freight, taxes, duties and brokerage expenses incurred upon importation by petitioner to the Philippines of advertising accessories pursuant to Sec. 30(a)(1) and (c) of the then National Internal Revenue Code and Sec. 80 of the Revenue Regulations No. 2" (see Petitioner's Memorandum, pp. 1-2).

The first issue is whether or not customs duties, taxes, freightage, brokerage, storage and other fees incurred in the importation of advertising accessories, charged to and constituting "Cost of Advertising Accessories" are considered allowable deductions.

Petitioner submitted that these expenses should be allowed as deductions since they "are charges necessarily incurred by petitioner to secure the release of the above imported advertising accessories from customs custody (Exhibit B, p. 9)", (ibid, p. 8); "these expenses are 'ordinary and necessary' for these are normally incurred in the business of the petitioner, and are appropriate and helpful in the development of its business" (ibid, p. 9).

We agree.

The deductions of the above-mentioned expenses are apparently justified under Sec. 30(a)(1) of the applicable National Internal Revenue Code, which states:

> "Sec. 30. Deductions from gross income.- In computing net income, there shall be allowed as deductions -
>
> (a) Expenses.- (1) Business expenses.- (A) - All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, x x x."

The deduction of taxes and duties paid in connection with the importation of advertising accessories is supported by Sec. 30(c)(1) of the then National Internal Revenue Code, thus:

> "Sec. 30. Deductions from gross income.- In computing net income there shall be allowed as deductions -
>
> xxx xxx xxx

(c) Taxes.- (1) In general.- Taxes paid or accrued within the taxable year in connection with the taxpayer's profession, trade or business x x x."

It is even further buttressed by Sec. 80 of Revenue Regulations No. 2, thus:

"Sec. 80. Taxes in general.- As a general rule, taxes are deductible with the exception of those with respect to which the law does not permit deduction. x x x"

"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. x x x"

Respondent's contention that the "Cost of Advertising Accessories" are considered as capital expenditures, hence, cannot be deducted from gross income but should be instead capitalized and subjected to annual depreciation, is without basis in fact and in law. The "Cost of Advertising Accessories" cannot be considered as capital expenditures since they neither materially add to the value of the advertising accessories nor appreciably prolong their life. They are not even considered as replacements. Hence, such contention is simply perceived by this Court as erroneous.

Petitioner, likewise, opposed the assessment on the alleged deficiency withholding tax at source on royalty expenses in the amount of P113,987.42, allegedly because of its failure to withhold and remit the same to the Bureau of Internal Revenue. Petitioner, however, submitted that "the proper withholding tax at source on royalty expenses had already been withheld and remitted to the respondent." (ibid.)

The second issue is whether or not the assessment of deficiency withholding tax at source on royalty expense inclusive of interest and surcharge is proper.

In a letter, dated March 1, 1985, respondent assessed petitioner of deficiency withholding tax at source computed as follows:

Deficiency Withholding Tax at Source

Royalty Expense	P4,489,566.50
Tax due thereon	1,122,391.63
Less: Withholding Tax paid	1,060,776.81
Deficiency withholding tax	61,614.82
Add: 25% surcharge	15,403.71
Interest (Maximum)	36,968.89
AMOUNT STILL DUE AND COLLECTIBLE	P 113,987.42

(see Petitioner's Exh. A, p. 2)

which was protested by petitioner maintaining that the above assessed deficiency tax of P61,614.82 has already been withheld and remitted to the Bureau of Internal Revenue. In explaining its allegation, the petitioner said, thus:

> "x x x The same amount corresponds to royalty expense of P246,459.28 (P61,614.82/25% = P246,459.28) for the period November 25, 1979 to November 30, 1979 (Exhibit D). Said amount of P246,459.28 was likewise included in the total royalty expenses of P503,316.85 corresponding to the period November 25, 1979 to December 29, 1979 (Exhibit E). Of the royalty payments of P503,316.85, petitioner withheld P125,829.21, representing 25% withholding tax at source on royalty expenses. The amount of tax withheld of P125,829.21 was then remitted by petitioner to the Bureau of Internal Revenue as evidenced by Confirmation Receipt No. 3504802 and Central Bank (CB) Revenue Tax Receipt No. 2871786, both dated January 10, 1980, (Exhibit G), and BIR Form 1743-C (QUARTERLY RETURN OF FINAL INCOME TAX WITHHELD AT SOURCE) dated January 10, 1980 reflecting therein the amount of royalty expenses of P503,316.85 (Exhibit F.)."

(See Petitioner's Memorandum, pp. 14-15.)

Court records revealed that petitioner indeed has already paid the amount of P61,614.82 which was equivalent to twenty-five percent (25%) of the royalty expense of P246,459.28 for the period November 25, 1979 to November 30, 1979 (see Exh. D), which amount was included in the total royalty expenses of P503,316.85 corresponding to the period November 25, 1979 to December 29, 1979 (see Exh. E). The amount of P125,829.21 representing 25% withholding tax at source on the P503,316.85 royalty expenses, has already been withheld and remitted by the petitioner to the Bureau of Internal Revenue (see Exh. G). Such remittance, however, was only made on January 10, 1980 (ibid). No explanation was advanced by the petitioner as to "why" the payment was delayed when it was already claimed as an expense as of November 30, 1979. This Court has consistently held that the date of remittance of the withholding tax at source to the Bureau of Internal Revenue should be at the time of accrual in the books of the taxpayer. In this case, the date should be reckoned on November 30, 1979, and the date of payment should have been on December 10, 1979 (which is the 10th day after the end of the period provided by law as the last day of payment). Hence, petitioner should be assessed in the form of interest and surcharge for late remittance from December 11, 1979 to January 10, 1980, computed as follows:

Withholding tax remitted on Jan. 10, 1980 but which should have been remitted on Dec. 10, 1979		P61,614.82
Surcharge: 25%	P15,403.71	
Interest: 14% per annum	718.84	
AMOUNT PAYABLE TO BIR	P16,122.55	

This Court, cognizant of the possibility that petitioner might have claimed again the same amount of P246,459.28 in the next succeeding year, wishes to warn herein petitioner to discontinue any act of claiming an expense in the preceding year and yet remit only on the succeeding year to avoid suspicion. This action is a deterrent to the programs of the Government and will ultimately work to the disadvantage of the taxpayer.

The third issue is whether or not petitioner is liable for a three percent (3%) contractor's tax and fixed tax on its activity of lending advertising accessories to theater owners.

Respondent assessed petitioner for a three percent (3%) contractor's tax and fixed tax on the ground that the latter engaged itself in the activity of leasing personal properties, i.e., advertising accessories in accordance to Sec. 205, which provides, thus:

> "Sec. 205. Contractors, proprietors, or operators of dockyards, and others.- A contractor's tax of three per centum of gross receipts is hereby imposed on the following:
>
> xxx xxx xxx
>
> (17) Lessors of personal property, except nonresident owners of property subject to final tax under Section 24(b)(vii) of this Code."

Petitioner, however, maintained that it should not be subjected to the above taxes since it did not conduct an independent business of leasing personal properties. The lending of advertising accessories to theater owners was only limited to the purpose of promoting a particular film being released in the Philippines. Hence, it is merely incidental to and an integral part of its main activity of film distribution. "Without the latter, petitioner cannot and does not lease advertising accessories. x x x Being incidental to petitioner's business of film distribution, it follows that no contractor's tax or fixed tax should be levied on its income derived from such activity." (Petitioner's Memorandum, p. 23.)

Rightly so.

Jurisprudence guides Us to believe that an activity that is a mere incident to, or as a necessary consequence of, the principal business, should not be taxed as an independent business in itself.

> "When a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business." (Standard Vacuum Oil Co. vs. Antigua, 96 Phil. 909)

"This is the consensus of authority" (Manila Press, Inc. vs. Sarmiento, 99 Phil. 31).

Thus, petitioner should only be liable for the two percent (2%) percentage tax on its gross receipts levied upon cinematographic film owners, lessors or distributors in accordance with Sec. 208 of the then National Internal Revenue Code which provides, thus:

> "Sec. 208. Percentage tax on stock, real estate, commercial, customs, and immigration brokers and cinematographic film owners, lessors, or distributors.- Stock, real estate, commercial, customs, and immigration brokers shall pay a percentage tax equivalent to six per centum of the gross compensation received by them. Cinematographic film owners, lessors or distributors shall pay a percentage tax of two per centum of their gross receipts." (Underscoring supplied)

which was already duly paid by the petitioner (see Exhs. I to P and sub-markings). The law being clear and supported by jurisprudence, the petitioner should no longer be assessed the alleged deficiency fixed and contractor's taxes.

WHEREFORE, in all the foregoing, the respondent's assessment against petitioner for deficiency income tax, withholding tax at source on royalty expenses, contractor's tax and fixed tax for fiscal year ended November 30, 1979, is HEREBY ORDERED

CANCELLED for being erroneous and for lack of merit. HOWEVER, petitioner is HEREBY ORDERED TO PAY respondent the amount of P16,122.55 as surcharge and interest for late remittance of withholding tax.

SO ORDERED.

Quezon City, Metro Manila, June 2, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals