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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIMPAN INVESTMENT
CORPORATION,
Petitioner,

-versus- C.T.A. CASE NO. 1358

THE COLLECTOR OF
INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - -x

Sept. 20, 1965

D E C I S I O N

This is an appeal from the decision of respondent assessing against and demanding from petitioner the sum of ₱25,492.60 as deficiency income tax for 1959.

Petitioner is a domestic corporation engaged in real estate business. For the year 1959, it filed its income tax return showing a net taxable income in the amount of ₱80,810.99 (Exhs. A & 1, pp. 3-4, BIR rec.). Upon the recommendation of an internal revenue examiner who conducted the verification of the return, respondent, on September 7, 1962, assessed against petitioner deficiency income tax for the year 1959 and interest in the amount of ₱25,492.60, details of which are as follows:

90-ACR-300846-62/59

Net income per return	₱ 80,810.99
Unallowable deductions & addt'l. income:	
(1) Christmas Presents (Personal) --------	13,703.75
(2) Maintenance & Repairs (Overstated) ---	44,513.07
(3) Entertainment (not ordinary & necessary-	500.40
(4) Depreciation-Buildings (overclaimed) --	20,133.69
(5) Loss on pilferage (unsupported) ------	600.00

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Net income per investigation -------------	₱160,261.90
Tax due thereon -------------------------	₱ 40,078.00
Less: Amount already assessed & paid ------	17,778.00
B a l a n c e ---------------------------	₱ 22,300.00
Add: ½% monthly interest from April 19, 1960 to September 7, 1962 -----------	3,192.60
TOTAL AMOUNT DUE & COLLECTIBLE -----------	₱ 25,492.60

(Exh. 7, pp. 22-23, BIR rec.; Exhibit B, pp. 76-77, CTA rec.)

Petitioner contested the said assessment on the ground that the claimed deductions were fully substantiated (Exh. C, p. 78, CTA rec.; Exh. 9, p. 27, BIR rec.). However, respondent denied the request for reconsideration and demanded from petitioner the amount of ₱28,272.16, inclusive of surcharge, interest and compromise penalty (Exh. D, p. 79, CTA rec.; Exh. 10, p. 35, BIR rec.). Hence, this appeal.

The only question involved in this case is whether or not respondent is justified in disallowing the following deductions:

(a) Christmas presents -------- ₱13,703.75;
(b) Maintenance & repairs ------ 44,513.07;
(c) Entertainment expenses ---- 500.40;
(d) Depreciation of buildings -- 20,133.69; and
(e) Loss on pilferage --------- 600.00.

Respondent disallowed the deduction of the amount of ₱13,703.75 spent by petitioner for Christmas presents which were given to petitioner's employees, their families, friends and government employees. The expenditure is not denied by respondent who, however, disallowed its deduction for being a personal expense of petitioner's stockholders. Petitioner contends that whether considered in the nature of creating good will among individuals having business dealings with petitioner or as additional compensation of individual construction workers and their families, it is deductible.

Petitioner's contention is not well taken. The mere allegation that the expense was made for the purpose of creating good will unaccompanied by evidence that it was a necessary business expense does not justify its deduction. Expenditures which are made solely for the purpose of creating good will are not deductible. (See Mertens, Law of Federal Income Taxation, Vol. 4, p. 367.) Similarly, donations made to employees and others, which do not have in them the element of compensation for services are not deductible from gross income (See Sec. 72, Revenue Regulation No. 2). For this reason, and on the admission of petitioner's own witness that the gifts were indiscriminately given to employees and non-employees of petitioner (t.s.n. pp. 35-42), the deduction has been properly disallowed.

Respondent disallowed the sum of ₱44,513.07 of the ₱47,601.90 claimed by petitioner as expenses for maintenance and repairs of various buildings owned by petitioner, the resumé of which is as follows:

Properties involved	Claimed	Allowed	Disallowed
1) Parañaque (personal)	₱ 6,130.45	₱ -.-	₱6,130.45
2) Nueva (Vicenta Bldg) 3 years	3,944.97	1,314.99	2,629.98
3) Parañaque Mangahan (personal)	7,058.90	-.-	7,058.90
4) Dewey Blvd. (5 yrs.)	5,783.70	1,156.74	4,626.96
5) Espeleta Gilda Bldg. (40 yrs.)	24,683.88	617.10	24,066.78
T o t a l ----------	₱47,601.90	₱3,088.83	₱44,513.07

The disallowances were made by respondent with respect to the Parañaque properties on the ground that the expenditures of petitioner on said properties are personal expenses. In the absence of evidence that the said properties were used in connection with the business of petitioner in 1958 (t.s.n. pp. 136, 137, 155, 156-158), the claimed deduction should be disallowed.

As appearing in the above resumé, respondent disallowed portions of the expenses in connection with the Vicenta, Dewey Blvd. and Espeleta Gilda buildings. The disallowances are premised on the ground that the improvements made on the buildings are capital and should be amortized.

From the evidence of record, it appears that expenditures were incurred on materials used for repairs in the nature of replacement of partitions, doors, windows and other parts of the buildings owned by petitioner; for plastering and painting the said buildings; for repairs of the air conditioners in one of the buildings; and for maintenance of elevator service in another (pp. 11-34, t.s.n., Hearing 6-30-66). From the foregoing, it would seem that the expenditures cover both repairs deductible as business expenses and capital expenditures. While petitioner presented a break down of these expenses (Exhs. G, G-1, G-2, G-3, G-4, G-5 & G-6, pp. 92-96, CTA rec.), which expenses were not denied by respondent (p. 15, t.s.n.), it, however, failed to make a proper segregation of the deductible from the non-deductible repairs. Where an expenditure covers both repairs deductible as business expenses and capital items, it is incumbent on the taxpayer to make a proper segregation; otherwise the entire expenditure will be disallowed (Mertens, Law of Federal Income Taxation, Vol. 4, p. 373). Accordingly, the disallowance of the claimed deduction for repairs and maintenance is proper.

Petitioner gave luncheons and dinners attended by its board of directors, the members of their families (t.s.n., p. 47, Hearing 6-30-66), engineers and architects connected with petitioner's construction program, and members of its office and field personnel (t.s.n., p. 98, Hearing 7-1-66). These luncheons and dinners were given purportedly to improve the image of petitioner and to afford opportunities to its employees to know the directors. And for those affairs, petitioner claimed a deduction for entertainment expenses in the total amount of ₱1,000.80, of which ₱500.40 was disallowed by respondent on the ground that the expense was personal. In view of the purposes for which the the questioned expenses were made, we believe that they have some definite reasonable purpose connected with the business of petitioner. Hence, the disallowance in the sum of ₱500.40 is not justified. 3

As regards the depreciation deductions on the buildings, respondent disallowed the sum of ₱20,133.69 on the basis of the recommendation of his witness-examiner, Marcelino T. Ocampo. Petitioner seeks to justify the depreciation rates used by it as mere continuations of those adopted by the former owners of the buildings.

While the weakness in respondent's method of determining the depreciation is shown by his examiner's superficial ocular inspection of the Gilda building (t.s.n., p. 174, Hearing 7-28-66) and the latter's failure to visit the Liberty and Pepita apartments, Reef, Ilang-Ilang, San Antonio and Perdigon buildings, nevertheless, petitioner should have proved affirmatively the correct ultimate facts supporting the deductions for depreciation (see Mertens, Law of Federal Income Taxation, Vol. 4, p. 125). For example, it should have established by evidence, testimonial or otherwise, the dates and nature of construction, materials, design, past maintenance, improvements, present condition and use, location and character of the buildings in order to enable us to determine the reasonableness of the depreciation rates adopted by petitioner. Having failed to do so, we are constrained to sustain the questioned disallowances on the depreciation claims of petitioner.

Finally, respondent disallowed the sum of ₱600.00 out of the amount of ₱1,057.00 claimed by petitioner as loss through pilferage. The disallowance in the sum of ₱600.00 is predicated upon the representation of the examiner that said loss cannot be explained by petitioner. Petitioner, however, points to an alleged decision of the Court of First Instance of Manila in Criminal Case No. 49736, certified copy of which was not presented before us despite the reservation by petitioner's counsel of the right to present the same as evidence. For failure of petitioner to satisfactorily explain the loss of the remaining balance, the disallowance thereof is justified.

WHEREFORE, the assessment appealed from is modified. Petitioner is hereby ordered to pay to respondent the amount of ₱25,324.09 as deficiency income tax for the year 1959 and interest from April, 1960 to September 7, 1962, itemized as follows:

Net income per return		₱80,810.99
Unallowable deductions:		
1) Christmas presents	₱13,703.75	
2) Maintenance & repairs...	44,513.07	
3) Depreciation - Bldgs. ..	20,133.69	
4) Loss on pilferage	600.00	78,950.51
Net income (as adjusted)		₱159,761.50
Income tax due thereon		₱ 39,928.00
Less: Amount already paid		17,778.00
Balance		₱ 22,150.00
Add: ½% monthly interest from April 19, 1960 to Sept. 7, 1962		3,174.09
Total amount due and collectible		₱ 25,324.09

If the deficiency tax is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay a surcharge of five per cent (5%) of the unpaid amount plus interest at the rate of one per cent (1%) a month, computed from the date this decision becomes final until paid, provided that the maximum amount that may be collected as interest shall not exceed the amount corresponding to a period of three (3) years. Without pronouncement as to costs.

SO ORDERED.

Quezon City, September 20, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge