REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANOTOK REALTY INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 5485

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 18 1999

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DECISION

This is a petition seeking for the withdrawal and cancellation of an assessment for alleged deficiency income tax for 1988 in the amount of P313,508.23, inclusive of surcharge, interest and compromise penalty, resulting from the disallowance of the amount of P361,254.28 claimed by Petitioner as fire loss and deducted from its income for taxable year 1988.

The factual backdrop of the case are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines and is engaged, among others, in the business of leasing apartment units.

On April 17, 1989, Petitioner filed its Annual Income Tax Return for the taxable year ended December 31, 1988 (Exh. C) and paid income tax in the amount of P182,786.27.

On February 3, 1992, Petitioner received a Pre-Assessment Notice, dated January 20, 1992 (Exh. K), issued by the Respondent for alleged deficiency income tax assessment for 1988 in the amount of P1,436,710.36, exclusive of interest. Petitioner then filed a protest on February 10, 1992, explaining in detail the findings of Respondent and contending that there is actually no deficiency income tax due for the said year.

On March 16, 1992, Respondent issued Assessment Notice No. 22-6-000605-88 (Exh. L), demanding payment of the amount of P2,403,736.54, detailed as follows:

Net Income disclosed by the return as audited		P1,017,287.89
Add: Discrepancies:		
Undeclared income	P1,038,617.20	
Taxes & licenses-unsupported	303,877.97	
Service fee-unsupported	282,894.40	
Fire loss-unsupported not properly presented to BIR	361,254.28	
Salaries and bonus- overstated	142,131.35	
Legal audit-EWT	59,586.60	
Depreciation-no lapsing schedule	643,467.12	
Total Adjustment		2,831,828.92
Net Income per investigation		P3,849,116.81
Less: Personal and add'l exemption		---
Amount subject to tax		P3,849,116.81
Income Tax due thereon		P1,347,191.00
Less: Amount already assessed		356,050.76
BALANCE		P 991,140.24
Add: 20% per annum		892,026.18
Compromise		25,000.00
Surcharge		495,570.12
TOTAL INCOME TAX DUE		P2,403,736.54

In response, Petitioner, through a letter dated April 1, 1992, and received by Respondent on April 7, 1992 (Exh. G), reiterated its objections and explanations contained in its Protest of February 10, 1992 and requested for a review of the subject assessment.

Respondent, however, sent to Petitioner a letter dated September 9, 1992 (Exh. M), demanding payment of the ₱2,403,736.54 within ten (10) days from receipt of said letter; otherwise, according to Respondent, it shall be constrained to refer the case to its Collection Enforcement Division for the issuance of warrants of distraint and levy to enforce collection.

Petitioner replied through a letter dated October 19, 1992 (Exh. H), requesting again for a reinvestigation of its case. Respondent accomodated Petitioner's request and invited the latter to an informal conference to refute the validity of its findings (Annex J, Petition for Review).

On January 20, 1994, Petitioner received Assessment Notice No. FAN-2-88-93-005890 (Exh. N) issued by Respondent on December 9, 1993, this time lowering the assessment to only ₱313,508.23, computed as follows:

Basic		₱126,439.00
Add:	25% Surcharge	31,609.75
	20% p.a. Interest	147,459.48
	Compromise penalty	8,000.00
TOTAL AMOUNT DUE & COLLECTIBLE		₱313,508.23

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The following day, January 21, 1994, Petitioner allegedly went to the BIR office and was informed that the "Fire Loss" claimed by Petitioner as deduction from its income for 1988 was disallowed as the same should have been deducted from its income for 1987. Petitioner then wrote a letter to Respondent on January 24, 1994 again asking for a reconsideration and cancellation of the assessment (Exh. I).

On January 20, 1997, Respondent answered Petitioner's letter of January 24, 1994, asking Petitioner to present any documentary evidence that will show that the latter filed a claim for fire insurance so that the same may be considered in reinvestigating the taxes due for 1988 and that failure to submit the said requirement will render the assessment final and unappealable (Exh. O).

Petitioner, in its letter dated February 3, 1997, advised Respondent that the property burned was not insured and that they have not received any compensation. In view of this circumstance, Petitioner requested for a reconsideration and cancellation of the subject assessment (Exh. J).

In reply to Petitioner's letter of February 3, 1997, Respondent explained that fire loss can only be considered as a deduction in the year actually incurred, unless there is a claim for fire insurance, and it

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appearing therefore that Petitioner did not insure the property owned, Section 29 (d) (2) of the National Internal Revenue Code shall apply. Respondent then gave Petitioner a period of ten (10) days to settle its tax liability (Exh. P).

Petitioner then elevated its case before this Court on April 7, 1997, asking for the cancellation and withdrawal of the assessment amounting to P313,508.23, on two grounds:

First, that the right of Respondent to collect had already prescribed, since collection is being enforced more than three (3) years after the Assessment Notice was issued on December 9, 1993; and

Second, that the latest assessment issued by Respondent is erroneous, because it is not based on actual facts, it appearing that a fire which occured on April 20, 1987 gutted several apartment units of Petitioner resulting in casualty loss.

In his Answer, Respondent claimed by way of Special and Affirmative Defenses that:

> "5. The deduction of fire losses claimed by petitioner should be disallowed. Since petitioner did not insure the property lost through fire, Section 29(d) (2) of the National Internal Revenue Code applies. Under the provisions of said section, the requisites for deductibility of losses are as follows:
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> 1. The loss must be that of the taxpayer;

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> 2. It must have been actually sustained or suffered during the taxable year;
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> 3. It must be evidenced by a closed and completed transaction; and
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> 4. It must not be compensated by insurance or otherwise.

Since petitioner failed to comply with the second and third requisites above, it cannot claim the particular deductions in issue.

6. Likewise, petitioner failed to file a Declaration of Loss before the nearest Revenue District Office within 45 days from the date of occurence of the casualty as mandated by Revenue Regulations No. 12-77.

7. Revenue Regulation No. 12-77 is a valid exercise of the Respondent's rule-making power as provided for under Section 254 of the National Internal Revenue Code, to wit:

> "Sec. 245. Authority of Secretary of Finance to promulgate rules and regulations.-The Secretary of Finance upon recommendation of the Commissioner shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this code. xxx"

8. Similarly, Section 4 (i) of the National Internal Revenue Code upholds the valid enactment and implementation of Revenue Regulation No. 12-77. Said section provides:

> "Section 4. Specific provisions to be contained in regulations.-The regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing, or defining:
>
> xxx xxx xxx
>
> "(i) The manner in which tax returns, information, and reports shall be prepared and reported and the tax collected and paid, as well as the conditions under which

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> evidence of payment shall be furnished the taxpayer, and the preparation and publication of tax statistics;"

9. A revenue regulation, the issuance of which is authorized by statute, has the force and effect of law (Article 7, Civil Code; Arches v. Bellosillo, 20 SCRA 32).

10. Petitioner's claim that respondent's right to collect the subject deficiency income tax has prescribed, is untenable. This is because although the Assessment Notice was issued on December 9, 1993, petitioner requested for reconsideration/reinvestigation of said assessment, which request was granted by respondent, thus, suspending the running of the statute of limitations regarding the collection of taxes as enunciated under Section 224 of the National Internal Revenue Code.

11. Tax Assessments by tax examiners are presumed correct and made in good faith. It is the taxpayer's duty to prove otherwise. (Sy Po v. Court of Tax Appeals, 164 SCRA 524; 51 Am-Jur 620-621). Petitioner in this case failed to overcome said presumption."

The issues, therefore, We are tasked to resolve are:

1. Whether or not the right of the Respondent to collect the tax had already prescribed; and

2. Whether or not the fire loss incurred by Petitioner in 1987 may be allowed as a deductible loss for 1988.

After a careful study of the facts attendant to the case at bar, We find for the Respondent.

With reference to the first issue, Petitioner contended that when Respondent wrote to Petitioner on January 20, 1997, his right to collect had already

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prescribed since more than three years have passed since he revised his assessment on December 9, 1993.

It bears stressing, however, that Petitioner requested for a reconsideration of said assessment on January 24, 1994 (Exhibit "I"), which was granted by Respondent Commissioner in a letter, dated January 20, 1997 (Exhibit "O"). Under Section 224 of the Tax Code, both these actions have the effect of suspending the running of the statute of limitations, thus:

> **Sec. 224 Suspension of running of statute.**-The running of the statute of limitation provided in Sections 203 and 223 on the making of assessments and the beginning of distraint or levy or a proceeding in Court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in Court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; xxx

But Petitioner argued that the January 20, 1997 letter of Respondent did not in effect grant a reinvestigation of Petitioner's case but to impose a condition before he grants the reinvestigation. According to Petitioner, in order to suspend the period to collect, the request for reinvestigation must be granted.

We do not agree.

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The January 20, 1997 letter of Respondent is hereby reproduced for easy reference:

> "This refers to your letter-protest dated January 24, 1994, against the assesssment of P313,508.23 representing deficiency income tax of Manotok Realty, Inc. for the year 1988 under Assessment Notice No. FAN-2-88-92-005890, dated December 9, 1993.
>
> In said protest you consistently maintained that the fire loss amounting to P361,254.30 suffered by the subject taxpayer in 1987 be considered as a deduction from its 1988 income tax return. In this connection, we would like to empasize (sic) that the fire losses are generally deductible in the year actually incurred. However, if you could present to us any documentary evidence purporting to show that you filed a claim for fire insurance, we will consider the same in reinvestigating the taxes due for 1988; otherwise, failure on your part to submit the said requirement, the assessment subject of your protest shall become final and unappealable.
>
> In view thereof, you are hereby given a period of five (5) days from receipt hereof to comply with the said requirement and for this purpose you may submit the same to the Chief, Legal Division at the 7th Floor BIR Bldg., Anda Circle, Port Area, Manila."

A close scrutiny of the above-quoted letter would reveal that Petitioner was required to submit the documentary evidence purporting to show that it filed a claim for fire insurance precisely because Petitioner's request for cancellation of the assessment was under reconsideration and said evidence would be vital to its decision on whether or not to withdraw the assessment. It is to be noted that as a general rule, losses must be claimed as

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deduction in the year actually sustained. And the loss must likewise be evidenced by a closed and completed transaction. In the instant case, Respondent could have denied outright Petitioner's request for reconsideration as the loss was sustained in 1987 and generally deductible only in 1987 but because Petitioner's case may fall under the exception, as when there is a claim for fire insurance, Respondent required Petitioner to submit the additional evidence which, unfortunately, Petitioner did not have. Petitioner's contention, therefore, that its request for reinvestigation was not granted and, therefore, did not suspend the period to collect, lacks basis.

We proceed to the second issue.

There is no dispute that a fire loss was sustained. The only question for determination is whether or not a fire loss sustained in 1987 may be allowed as a deduction on the following year 1988.

For purposes of clarity, We shall dwell on the requisites before a "loss" may be deducted from gross income:

> 1. The loss must be that of the taxpayer;
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> 2. It must have been actually sustained or suffered during the taxable year;
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> 3. It must be evidenced by a closed and completed transaction; and

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4. It must not be compensated by insurance or otherwise.

Based on the foregoing, We agree with Respondent when it disallowed the fire loss claimed by Petitioner. The loss was sustained in 1987 and is already evidenced by a closed and completed transaction as of 1987, the property not having been insured and the amount of loss having been reasonably ascertained as of said year. Therefore, it should have been properly claimed as a deduction in 1987.

For its non-compliance, Petitioner puts the blame on Respondent's officers who allegedly gave an inaccurate and confusing verbal order requiring the presentation of the certificate of fire loss. Petitioner, however, failed to identify the officers who gave the erroneous direction. It cannot therefore expect this Court to rely on mere allegations to suit their purpose. Even assuming that such an erroneous instruction was given, Petitioner should have exerted efforts to verify the veracity of the statements of the said officers. The law is too clear to excuse Petitioner from compliance therewith.

Respondent likewise disallowed the fire loss claimed by Petitioner as deduction for its failure to comply with Section 3 of Revenue Regulations 12-77, which states:

> "SEC 3. ***Declaration of loss.*** - Within forty-five days after the date of the occurrence of casualty or robbery, theft or embezzlement, a taxpayer who sustained loss

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therefrom and who intends to claim the loss as a deduction for the taxable year in which the loss was sustained shall file a sworn declaration of loss with the nearest Revenue District Officer. The sworn declaration of loss shall contain, among other things, the following information:

(a) The nature of the event giving rise to the loss and the time of its occurrence;

(b) A description of the damaged property and its location;

(c) The items needed to compute the loss such as cost or other basis of the property; depreciation allowed or allowable if any; value of property before and after the event; cost of repair;

(d) Amount of insurance or other compensation received or receivable.

Evidence to support these items should be furnished, if available. Examples are purchase contracts and deeds, receipted bills for improvement, and pictures and competent appraisals of the property before and after the casualty."

For its part, Petitioner admitted in its letter to Respondent, dated January 24, 1994 (Exh. I), that it indeed, failed to declare its loss within 45 days after the occurrence of the fire as provided in RR 12-77, thus:

"While it is true that the required procedure is for us to report said fire to the BIR, we did not do so. We apologize for our ignorance and while it is true that we may have committed a procedural error, the fact remains that we had incurred a fire loss which is a justifiable deduction. x x x"

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Under Sec. 4 of the same Revenue Regulation, the failure to submit the said declaration of loss within the period prescribed in these regulations will result in the disallowance of the casualty loss claimed in the taxpayer's income tax return. Please note that the said requirement was issued pursuant to Section 29(d) (3) (now Section 34) of the National Internal Revenue Code. (Emphasis supplied).

Verily, Petitioner's failure to comply with the aforesaid regulation prove fatal to its case.

WHEREFORE, premises considered, Petitioner is hereby **ORDERED** to **PAY** Respondent the amount of ₱313,508.23, plus 20% annual interest from December 9, 1993 until fully paid, pursuant to Section 249 of the Tax Code.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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