REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DOMEL REALTY & DEVELOPMENT
CORPORATION,
Petitioner,

Oct. 13, 1968

- versus - C.T.A. CASE No. 1676

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

D E C I S I O N

This is an appeal from the decision of respondent holding petitioner liable for ₱4,161.48 and ₱100.00 as deficiency income tax and compromise penalty for failure to attach to its 1959 income tax return the required schedule of income producing properties and the schedule of taxes paid during the year.

Petitioner, a duly registered domestic corporation, is engaged in business as a real estate dealer as defined in Section 194(s) of the National Internal Revenue Code. Petitioner filed its 1959 income tax return and declared therein a gross income of ₱53,573.40 and a net taxable income of ₱3,154.63 (Exhs. A & 1, p. 11, BIR rec.). Upon investigation thereof by Revenue Examiner Arturo P. Tan, he disallowed certain items of deduction from petitioner's gross income and recommended to respondent that a deficiency income tax assessment of ₱389.00, inclusive of interest and compromise penalty, be issued against petitioner (Exh. 3, p. 16, BIR rec.).

Subsequently, Senior Revenue Examiner José B. Llanesa reinvestigated the said income tax case and recommended that the deficiency income tax assessment be revised and increased. On March 1, 1965, respondent issued against petitioner a deficiency income tax assessment of ₱4,161.48, inclusive of interest, plus ₱100.00 as compromise penalty (Exhs. 7 and 8, p. 30, BIR rec.), computed and itemized in respondent's letter of demand, dated October 24, 1965, as follows:

Net income disclosed by the return as audited		₱ 3,154.63
Unallowable deductions & additional income:		
Repairs - found to be capital expenditures	₱ 350.00	
Office Expenses - unsupported	1,010.00	
Rep. and Entertainment - unsupported	46.20	
Salaries and wages - representative of taxpayer refused to submit evidence to support same, hence, deemed unsupported as to shift burden of proof	14,619.40	
Total Adjustments		₱16,025.60
Net income as per investigation		₱19,180.23
Less personal and additional exemptions		-.-
Amount subject to tax		₱19,180.23
Income tax due thereon		₱ 4,220.00
Less amount already assessed		694.00
B a l a n c e		₱ 3,526.00
½% monthly interest from 4-16-60 to 18%		635.48
Total deficiency income tax due		₱ 4,161.48
Compromise for failure to submit schedule of income producing properties	₱50.00	
Compromise for failure to submit schedule of taxes ...	50.00	
TOTAL COMPROMISES DUE	₱100.00	

(BIR rec., p. 29.)

Petitioner disputed and contested the assessment in question but respondent denied the same and reiterated his demand for the said 1959 deficiency income tax, interest, and compromise penalty. (Exhs. D & E, pp. 31-32, BIR rec.). From the said decision, petitioner appealed to this Court.

During the hearing of the case on the merits, petitioner's counsel conceded and manifested to the Court that the sums of ₱350.00, ₱1,010.00 and ₱46.20, or a total of ₱1,406.20, representing cost of repair, office and representation expenses, respectively, are not deductible from petitioner's gross income in 1959.

The only issue, therefore, submitted to the Court for resolution is whether or not the salary expense of ₱14,619.40 is deductible from petitioner's gross income in 1959.

In justifying the deduction of ₱14,619.40 from petitioner's gross income in 1959, petitioner presented and submitted evidences, testimonial and documentary, showing that it is a real estate dealer; that it has thirteen (13) apartments in Manila, Makati, Rizal, and Pasay City, and two (2) of which are 4 and 5 storey-buildings; that it had fifteen (15) employees in 1959 consisting of the manager, a clerk, driver, bill collectors, building janitors, and casual employees; that it paid salaries and wages to its employees in 1959 as evidenced by payrolls signed by the said employees and recorded and entered in petitioner's cash and ledger books which were registered with the revenue office; that the recorded salary expenses were compensation paid for the personal services actually rendered by petitioner's employees; and that the said expenses are ordinary, necessary and reasonable in carrying on the real estate dealer's business.

Out of the salaries and wages amounting to ₱14,619.40, petitioner admitted during the course of the hearing that the amounts of ₱128.00, ₱25.00, and ₱129.00, and ₱50.00 - a total of ₱332.00 - are not deductible from its gross income in 1959 because the first three items are not supported by vouchers and receipts while the last item of ₱50.00 was given to a certain Adelaida Besa as a contribution to a deceased member of her family and, therefore, it is not an expense in carrying on petitioner's business as a real estate dealer.

With respect to the sums of ₱37.00 and ₱15.00 paid by petitioner for medical expenses of Ernesto Conde, a security guard in petitioner's employ, the total of ₱52.00 is deductible from petitioner's gross income in 1959 because it was intended as an additional compensation.

After objecting and opposing the various items of deduction stated above, respondent made a sweeping statement "that the amount of ₱14,619.40 claimed as salaries and wages is enormous and unreasonable for a business like that of petitioner, considering the fact that its income was derived from rentals of its apartments" (Page 5, Respondent's Memo., CTA rec., p. 60). During the trial of the case, however, respondent failed to adduce evidence which would sustain its conclusion. We hold, therefore, that a corporation has the right to fix the compensation of its employees (Ledesma v. Collector of Internal Revenue, 42 Phil. 912) and courts are not inclined to intervene with that right if properly exercised. (Levine & Bros., Inc. v. Commissioner, 101 F (2d) 391; Wagegro Corp., 38 BTA 1225). It follows that petitioner is entitled to deduct from its gross income in 1959 the salary expense of ₱14,235.00 (₱14,619.40 less ₱384.00) inasmuch as the same is supported by the evidence of petitioner and the provisions of Section 30(a)(1) of the National Internal Revenue Code.

In view of the foregoing consideration, we find petitioner liable for 1959 deficiency income tax of ₱450.76 computed as follows:

Net income per return		₱3,154.63
Unallowable deductions:		
(1) Repairs	₱ 350.00	
(2) Office expenses	1,010.00	
(3) Representation & entertainment	46.20	
(4) Salaries and wages		
(a) Unsupported	282.00	
(b) Contribution	50.00	
Total Adjustments		1,738.20
Net income (as adjusted)		₱4,892.83

Income tax due thereon	₱1,076.00
Less: Amount already assessed ..	694.00
B a l a n c e	₱ 382.00
Add: ½% monthly interest from April 16, 1960 to April 15, 1963 (18%)	68.76
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 450.76

As to the compromise penalty of ₱100.00 for alleged failure of petitioner to attach to its 1959 income tax return the required schedule of income producing properties and the schedule of taxes paid during the year, suffice it to say that respondent does not have any power to impose a compromise penalty without the consent of petitioner. (Collector v. U.S.T., et al., G.R. Nos. L-11274 and L-11280, November 28, 1958; Collector v. Bautista, et al., G.R. Nos. L-12250 and L-12259, May 27, 1959; Philippine International Fair, Inc., v. Collector of Internal Revenue, G.R. Nos. L-12928 and L-12932, March 31, 1962). The imposition, therefore, of the compromise penalty in this case is illegal.

WHEREFORE, respondent's 1959 deficiency income tax assessment against petitioner is hereby modified. Petitioner is ordered to pay respondent or his authorized collection agent the amount of ₱450.76 as deficiency income tax and interest for 1959. If the said deficiency income tax is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay the interest and surcharge imposed by Section 51(e) of the Tax Code. Without pronouncement as to costs.

SO ORDERED.

Quezon City, October 13, 1968.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge