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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHEMFIELDS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4840

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 22 1996

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D E C I S I O N

Petitioner instituted this petition for review on 20 August 1992 seeking to nullify the Warrant of Distraint and Levy issued by the Bureau of Internal Revenue and the cancellation of Assessment Notice No. FAN-1-83-87-005099.

Petitioner is a corporation duly organized and existing under the laws of the Philippines. It is mainly engaged in the production/manufacture and sale of semi-synthetic antibiotics duly licensed and registered to operate as a BOI Registered Preferred Pioneer Enterprise under Republic Act No. 5186 with Certificate of Registration No. 77-544 issued on 18 October 1977 (Exh. E).

On 13 April 1984, petitioner filed its 1983 Income Tax Return (Exh. F) with the Bureau of Internal Revenue. The following documents were attached by petitioner to its Income Tax Return:

a. Audited Financial Report for 1983 (Exh. G);

b. Copy of its 1982 Income Tax Return;

c. BIR Form No. 1702-E (Incentives Availed of Under R.A. 5186) - showing the allowable deductions claimed in the amount of P2,023,995.79, representing accelerated depreciation for 1983; and

d. Copy of the letter addressed to the BIR, dated 30 March 1984, filed on 4 April 1984, informing respondent that it was availing of the accelerated depreciation incentive, provided for under Section 7(b) of R.A. 5186, as amended, starting its 1983 Income Tax Return.

A Letter of Authority, dated 14 February 1985, was sent by Jose M. Salingdong, Revenue Regional Director of Mandaluyong, Metro Manila to petitioner's office authorizing Revenue Examiner - Mr. Felix Sanchez with the supervision of Mr. Sam Dizon, Group Supervisor, to examine the books of petitioner for the year 1983. After conducting an examination, the examiner submitted an Examiner's Office Audit Report, dated 15 July 1985, showing no discrepancy. Likewise, the report on Adjustments to Net Income showed no unallowable deduction and/or additional income. Thus, it was recommended that petitioner be informed that after investigation was conducted it was found that petitioner has no deficiency tax due for 1983 and in view thereof, this case is considered closed. However, Ms. Imelda L. Reyes, then Assistant

Commissioner, National Assessment Office, did not approve the recommendation of the revenue examiner. Instead, she pointed to some discrepancy, as follows: (p. 81, BIR record)

"December 4, 1986

MEMORANDUM TO:
Chief, NARD

Re: CHEMFIELDS, INCORPORATED

Take notice that taxpayer claimed an accelerated deprecition equal to P2,023,995.79. This amount was not credited in the accumulated Deprecition account and therefore not 'in accordance with the procedure established by the Bureau of Internal Revenue' otherwise they will be not only accelerating the depreciation but claiming more than the total cost of the asset.

Let us therefore assess the taxpayer on this discrepancy computed below.

	1983
Net Income/Return	P NIL
Add: Accelerated Depr. not credited to the reserve account	2,023,995.79
Net Taxable Income	P2,023,995.79
Income Tax Due	P 698,399.00
Less: Prior Year T. Credit	P 102,925.51
W/Tax on Insurance rebates	6,556.66
TOTAL	P 109,482.17
Def. Income Tax	P 588,916.83
Interest up to 12/15/86	314,088.95

TOTAL AMOUNT STILL DUE P 903,005.78

(SGD.) IMELDA L. REYES
Assistant Commissioner
National Assessment Office"

In a letter dated 17 October 1988, respondent demanded the collection and payment of the total amount of P942,266.93, representing alleged Deficiency Income Tax for 1983 inclusive of interest (maximum) of P353,350.10, per FAN-1-83-87-005099 (p. 87, BIR record). On 15 November 1988, petitioner filed a protest (Exh. B) claiming that it is a BOI registered preferred pioneer enterprise and as such it is entitled to certain privileges which, among others, include the use of the accelerated depreciation. Instead of the usual credit entry in the accumulated depreciation account, petitioner credited it to the Deferred Income Tax Payable to be paid once the asset are fully depreciation (using the accelerated method of depreciation).

In a letter dated 1 December 1988, Asst. Commissioner Imelda Reyes, requested petitioner to submit supporting papers to prove that it is entitled to avail the accelerated depreciation method granted as an incentive by the BOI pursuant to being a preferred pioneer enterprise (Exh. C). In a Memorandum dated 11 January 1989, addressed to Deputy Commissioner Eufracio D. Santos, Ms. Erlinda O. Matic, Chief of the National Audit Review Division (NARD), recommended the cancellation of the assessment it appearing from the records that petitioner was able to submit the documents necessary to prove entitlement to the deduction of depreciation by using the accelerated method (see. p. 114, BIR record).

Thereafter Asst. Commissioner Imelda Reyes reiterated her Memorandum, dated 25 January 1989, to the Chief of NARD, to review the claimed accelerated depreciation. For if the accelerated depreciation will not be credited to the accumulated depreciation account the total depreciation will amount to double the cost of the asset, which is not the intention of the law. Hence, the case was forwarded to the Chief, Law Division for review. However, instead of rendering an opinion on the matter, the Chief of the Legislative, Ruling and Research Division recommended the immediate issuance of a Warrant of Distraint and Levy against petitioner considering that the collection period will prescribe on 30 June 1992 (see p. 125, BIR record). Thus, respondent without rendering any decision on the protest filed by petitioner, immediately issued a Warrant of Distraint and Levy which was received by petitioner on 21 July 1992 (Exhs. A and A-1).

On 7 August 1992, petitioner requested the lifting of said Warrant on the ground that it had seasonably protested the assessment and that the documents required were duly submitted, to the satisfaction of the examiner, to prove its entitlement to avail of the incentives granted under Section 7 of R.A. 5186, as amended (Exh. D). Then, on 20 August 1992, petitioner, without waiting for the decision of respondent on its request to lift the warrant, filed a petition for review with this Court praying for the cancellation of the assessment and the lifting of the Warrant of Distraint and Levy issued by respondent. The issuance of said warrant was considered by the petitioner as a denial of its protest thus appealable to this Court in line with the doctrine laid down in the case of **Algue v. Commissioner of Internal Revenue, CTA Case No. 1620, January 16, 1968.**

Respondent justified the legality of the assessment isssued against petitioner and anchored as basis thereof petitioner's failure to credit the amount of accelerated depreciation to the accumulated depreciation account in effect depreciation will be double the cost of the asset. Respondent further contended that the assessment had become final and unappealable for failure of petitioner to protest within thirty (30) days the assessment pursuant to Section 229 of the National Internal Revenue Code.

The decisive question is whether or not petitioner is entitled to claim as a valid deduction from its gross income for 1983 the accelerated depreciation of P2,023,995.79 pursuant to the privilege granted by the BOI as a preferred pioneer enterprise.

On the contention of respondent that the assessment has become final considering that the protest filed on 15 November 1988 had already prescribed it appearing from the records that the Assessment Notice No. FAN-1-83-87-005099 (Exh.2) and the demand letter (Exh. 1), both dated 30 June 1987, were reissued to petitioner. We doubt, however, that the demand letter and assessment notice were sent to petitioner on said date. Petitioner denied having received the same. In fact, petitioner objected to the admission of these documents (Exhs. 1 and 2) for respondent in the absence of proof that the same were served on petitioner. A careful scrutiny of the records will reveal that petitioner merely acknowledges receipt of the Tracer letter dated 17 October 1988, reference thereof was shown in petitioner's protest, dated 14 November 1988 (Exh. B), which letter was filed the following day with the BIR. Thus, the protest filed on 15 November 1988 was filed on time.

We now go to the merits of this case.

It is an elementary rule that tax assessments are presumed to be correct unless the contrary is shown, and the burden of proof rests upon the taxpayer to overcome this presumption. The burden of the taxpayer contesting the validity or correctness of an assessment is to prove not only that the Commissioner of Internal Revenue is wrong but the he (taxpayer) is right. **(Lino Gutierrez v. Collector or Internal Revenue, CTA Case No. 504, January 28, 1962; Esso Standard Fertilizer & Agricultural Chemical Co., Inc. (Philippines) v. Commissioner of Internal Revenue, CTA Cases Nos. 1862, 1879, 1888, 1893 & 1896, May 30, 1980; Augusto L Guanzon v. Efren I. Plana, Commissioner of Internal Revenue, CTA Case No. 2821, August 27, 1980; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.)** Even more, where deduction for expenses is disallowed by the Commissioner of Internal Revenue, it is incumbent upon the taxpayer to prove that the expense is allowable under the law. **(Carmel Corporation v. The Honorable Efren I. Plana, as**

Acting Commissioner of Internal Revenue, CTA Case No. 2775, January 30, 1981.)

The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. **(Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, L-26911, January 27, 1981, and Commissioner of Internal Revenue v. Atlas Consolidated Mining & Development Corporation and Court of Tax Appeals, L-26924, January 27, 1981.)**

Based upon the aforestated facts and the evidence presented by petitioner during the hearings conducted on this case, the Court believes that petitioner is entitled to deduct the accelerated depreciation of P2,023,995.79 for 1983. Petitioner has sufficiently proven by way of documentary and testimonial evidence that the claimed accelerated depreciation is allowable under the law. These evidence comprise of the following:

(1) BOI Certificate of Registration No. 77-544 (Exh. E) showing that petitioner is a registered BOI Preferred Pioneer Enterprise entitled to avail of the incentives granted under R.A. 5186;

(2) 1983 Income Tax Return (Exh. F) which includes BIR Form No. 1702-E - Incentives availed of under R.A. 5186, showing petitioner's availment of the Accelerated Depreciation of P2,023,995.79;

(3) Financial Report for 31 December 1983 and 1982 (Exh. G) explaining the use of the Accelerated Depreciation Method and that the same was credited to the Deferred Income Tax account instead of the usual Accumulated Depreciation. This explains why the Accelerated Depreciation was not credited to the Accumulated Depreciation account instead it was credited to the Deferred Income Tax account. There is no double deduction as claimed by respondent. The Notes to the Financial Statements described the procedure adopted by petitioner with respect to the Accelerated Depreciation, pertinent portion thereof are quoted hereunder:

CHEMFIELDS, INC.
NOTES TO FINANCIAL STATEMENTS

"3. Registration with the Board of Investments

The company is registered with the Board of Investments under R.A. No. 5186 as a preferred pioneer enterprise for the manufacture of semi-synthetic antibiotics. As such, it is entitled to certain tax and non-tax incentives and benefits granted under the Act.

Of the many incentives offered to registrants, the company has availed itself of the incentives on net operating loss carry over, deductions of organization and pre-operating expenses, accelerated depreciation of certain property, plant and equipment for income tax purposes, and exemption from payment and reduction/deferment of taxes and duties on certain imported machinery and raw materials. (Exh. G-2)

4. Deferred Income Tax

> Deferred income tax credit represents the tax effect of the timing difference resulting from accelerated depreciation of certain property, plant and equipment as allowed for tax purposes by the Board of Investment. (Exh. G-3)"

(4) List of Machinery and Equipment and their Accelerated Depreciation as of 31 December 1983 (Exhs. S, S-1 to S-13);

(5) Inter-Office Correspondence, dated 15 February 1979 (Exh. T), showing the summary of tax laws that affect the tax-exempt status of Chemfields, to wit:

> "Section 7 of R.A. 5186 provides the following incentives:
>
> (a) x x x x x x x x x.
>
> (b) Accelerated depreciation of fixed assets to the extent of not more than twice as the normal rate if expected life is 10 years or less; or depreciated over any number of years between 5 years and expected life, if the latter is more than ten (10) years. Taxpayer must notify BIR as to the rate of depreciation used."; and

(6) Certification of the BOI (Exh. U-1) showing that petitioner is a BOI-registered pioneer enterprise entitled to use the accelerated depreciation method pursuant to Sec. 7(b) of R.A. 5186.

As pointed out by petitioner, Sec. 7(b) of R.A. 5186 specifically provides for the statutory authority in claiming as a deduction the accelerated depreciation of P2,023,995.79 for 1983, thus -

"SEC. 7. ***Incentives to a Registered Enterprise.*** - A registered enterprise, to the extent engaged in a preferred area of investment, shall be granted the following incentive benefits:

(a) x x x   x x x   x x x.

(b) ***Accelerated Depreciation.*** - At the option of the taxpayer and in accordance with the procedure established by the Bureau of Internal Revenue, fixed assets may be (1) depreciated to the extent of not more than twice as fast as normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten years or less; or (2) depreciated over any number of years between five years and expected life if the latter is more than ten (10) years; and the depreciation thereon allowed as a deduction from taxable income: *Provided,* That the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it."

It will be noted, as indicated in the BIR records of this case that petitioner filed on 4 April 1984 a letter, dated 30 March 1984, informing the Bureau that it is availing of the Accelerated Depreciation and indicating the rates that will be used starting from Income Tax Return of 1983 (see p. 52, BIR records). Therefore, petitioner has complied with the requirement of notification with the BIR pursuant to Section 7(b) of R.A. 5186, as amended.

WHEREFORE, in view of the foregoing and finding the petition meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is hereby ordered to **cancel** the 1983 Deficiency Income Tax Assessment (FAN-1-83-87-005099) served against petitioner per her letter dated 17 October 1988 and to **lift** the Warrants of Distrant and/or Levy served against petitioner on 21 July 1992.

No pronouncement as to cost.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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