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PRISCILA ESTATE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 334

Nov. 29/60

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue denying the claim of the Priscila Estate, Inc. for the refund of the sum of ₱3,757.69 but instead crediting petitioner only the amount of ₱1,447.00 as overpaid income tax for the calendar year 1950 and assessing the amounts of ₱3,575.49 and ₱22,113.10 as deficiency income taxes for the years 1949 and 1951, respectively, plus the corresponding penalties incident to late payment.

Petitioner, Priscila Estate, Inc., a domestic corporation (Preliminary Statement, Petition for Review, CTA rec. p. 1) engaged in the business of leasing real estate (Exh. 9, CTA rec. p. 116), filed its income tax returns for the years 1949, 1950 and 1951 on April 18, 1950, April 28, 1951 and May 15, 1952, respectively. On June 13, 1952 it supplanted its income tax return for 1951 (Pars. 1, 2 and 3, Statement of Undisputed Facts, Petition for Review, CTA rec. p. 2). On the basis of said returns, respondent assessed the corresponding taxes, which were duly paid.

On September 13, 1952, petitioner claimed for the refund of ₱4,941.00 as overpaid income tax for the year 1950, alleging that in its return for the same year it deducted from its gross income only the sum of ₱6,013.85 instead of ₱39,673.25 representing loss sustained from the sale on October 27, 1950 of a lot and building known as Building Priscila No. 2 (Exh. D, CTA rec. pp. 52-53). Whereupon, respondent caused petitioner's income tax returns for 1949, 1950 and 1951 to be investigated, as a result of which a tax credit of ₱1,443.00 for 1950 was granted and deficiency income taxes were determined on November 3, 1953 in the amounts of ₱3,575.49 and ₱22,166.10 for the years 1949 and 1951, respectively, computed and explained as follows:

1949

Net income per return	₱44,156.68
Add:	
Net profit on undeclared sale of lot	2,260.00
Cost of bldg. demolished to give way to a new bldg., charged to depreciation for 1949	11,237.85
Overclaimed depreciation	16,036.91
Residence tax of Mr. & Mrs. Carlos M. Sison	261.00
Net income per investigation	₱73,952.44
Tax due thereon	₱ 8,874.29
Tax already paid	5,298.80
Deficiency tax still due	₱ 3,575.49

(See Exhibit E, CTA rec. pp. 54-55.)

Net Profit of ₱2,260.00:

A lot transferred by the spouses Carlos Moran Sison and Priscila F. Sison to petitioner Priscila Estate, Inc.

at its assessed value of ₱7,740.00 was subsequently sold by the latter for ₱10,000.00 (see Exh. 5, CTA rec. p. 106), thereby allegedly obtaining a profit of ₱2,260.00.

Loss of ₱11,237.85 for demolition of barong-barong:

Petitioner acquired a "barong-barong" at the cost of ₱12,000.00 on February 28, 1949 (Exh. 5, CTA rec. p. 106) which it subsequently demolished on December 31, 1949 upon order of city authorities (Exh. K, CTA rec. p. 85; Exh. J, CTA rec. p. 83). In its income tax return for 1949 it claimed as deduction from gross income the undepreciated value of said "barong-barong" in the amount of ₱11,237.85. This item was disallowed by respondent on the theory that the building was demolished to make way for the erection of a new structure (see Exh. I, CTA rec. p. 79).

Overclaimed depreciation of ₱16,036.91:

The amount of ₱16,036.91 was disallowed (Exh. E, CTA rec. p. 54) from the total depreciation claim of ₱68,430.15 on the ground that petitioner existed only for ten months in 1949, that is, from February 28 to December 31, 1949. In computing the depreciation allowed with respect to some properties respondent adopted rates different from those used by petitioner. However, petitioner admits to have overstated its claim for depreciation by ₱9,534.38.

Residence tax of Mr. & Mrs.
C. M. Sison - ₱261.00:

The disallowance of ₱261.00 representing the residence tax of Mr. and Mrs. Carlos Moran Sison is not contested by petitioner.

1950

Net income per 1st investigation		₱ 6,656.64
Add:		
Mun. license of C. M. Sison and T. Dominguez		24.00
Overstated depreciation		17,796.95
Additional profit on Buendia Subdivision:		
per 1st investigation ..	₱ 5,530.25	
per reinvestigation	7,986.20	2,455.95
Less:		
Additional loss on sale of Bldg. Priscila No. 2:		
per 1st investigation ..	₱38,920.00	
per reinvestigation	43,920.00	(5,000.00)
Net income per reinvestigation		₱21,863.54
Tax due thereon		3,498.00
Tax already paid		4,941.00
Amount credited to 1951		(₱ 1,443.00)

(See Exh. E, CTA rec. p. 54.)

Net income of ₱6,656.64:

Upon investigation, Asst. Examiner of the Bureau of Internal Revenue Sunga determined a net income of ₱6,656.64 after taking into consideration the loss sustained by petitioner on the sale of Building Priscila No. 2 (Exh. 8, CTA rec. p.113) amounting to ₱38,920.00 (Exh. E, CTA rec. p. 54).

Municipal license tax of C.M. Sison & T. Dominguez - ₱24.00:

Respondent disallowed the amount of ₱24.00 representing the municipal license tax of Attys. C. M. Sison and T. Dominguez on the ground that the same does not constitute an expense of the corporation (Exh. 8, CTA rec. p. 55). Later, respondent allowed said expense to be deducted from petitioner's gross income (Exh. G, CTA rec. p. 73).

<u>Overstated depreciation - ₱17,726.95:</u>

Respondent disallowed ₱17,726.95 from the total amount claimed by petitioner as depreciation on the ground that said claim is unreasonable. The disallowed sum is the difference between the claim in petitioner's income tax return and respondent's findings arrived at by using depreciation rates sanctioned by the Bureau of Internal Revenue (Exh. 8, CTA rec. p. 114).

<u>Additional profit on sale of a lot at Buendia Subdivision - ₱2,455.95:</u>

Petitioner sold in 1950 a lot at the Buendia Subdivision and declared thereon a net profit of ₱5,026.00. Using the assessed value as basis, respondent determined an additional profit of ₱2,455.95.

<u>Additional loss on sale of Building Priscila No. 2:</u>

In its income tax return for 1950, petitioner declared a loss on the sale of Building Priscila No. 2 in the amount of ₱6,013.85, but subsequently, it claimed an additional loss of ₱33,659.40 computed as follows:

Gross selling price (Oct. 27, 1950)	₱250,000.00
Add:	
Depreciation claimed and allowed to the Priscila Estate, Inc. from March 1, 1949 to October 27, 1950	55,000.00
Total	₱305,000.00
Less:	
Cost of acquisition by the Priscila Estate, Inc. on Feb. 28, 1949: ₱343,920.00	
Add: Expense for sale.. 753.25	344,673.25
Loss sustained	(₱ 39,673.25)
Less: Loss claimed in return	6,013.85
Additional Loss claimed	₱ 33,659.40

(Exh. D, CTA rec. p. 52.)

Respondent in his reinvestigation ascertained the loss sustained by petitioner in the sale of Building Priscila No. 2 to be ₱43,920.00, instead of the ₱38,920.00 previously determined.

1951

Net income per return	₱ 96,585.31
Add:	
Additional profit on sale of properties:	
Sto. Cristo property	54,333.33
Buendia Subdivision (Lots 7, 8, 9, 12 & 13)	10,774.91
Profit on undeclared sale to Juan Ong Hong	7,724.60
Overclaimed depreciation	12,244.66
Municipal license of C. M. Sison & T. Dominguez	76.80
Privilege tax of C. M. Sison & T. Dominguez	100.00
Penalties on deficiency taxes	40.69
Net income per investigation	₱181,880.30
Tax due thereon	₱ 42,926.00
Tax already paid	19,316.90
Deficiency tax still due	₱ 23,609.10
Less amount refundable, 1950	1,443.00
Balance	₱ 22,166.10

(Exh. 8, CTA rec. p. 58.)

Additional profit on sale of various properties:

Respondent determined additional profits of ₱54,333.33 and ₱10,774.91 on the sale of petitioner's Sto. Cristo property and five lots in the Buendia Subdivision (Lots 7, 8, 9, 12 & 13), respectively. This determination is based on the assessed value as the cost of acquisition of said properties by petitioner (Exh. E, CTA rec. p. 55).

Profit on undeclared sale of a lot to Juan Ong Hong:

Respondent uncovered a sale of a lot to Mr. Juan Ong Hong from which he determined a profit of ₱7,724.60, based on the assessed value of the property involved. Said property was acquired by petitioner from Mr. and Mrs. Carlos Moran Sison at its assessed value. The sale was not declared allegedly for the reason that no profit inured to the corporation (Priscila Estate, Inc.). (See Exh. 7, CTA rec. p. 108.)

Overclaimed depreciation - ₱12,244.66:

Petitioner claimed a deduction for depreciation on various properties in the total amount of ₱37,024.34 (Exh. K, CTA rec. p. 86) (₱37,023.74 according to the worksheet of BIR Examiners Crescencia A. Perez and Paz C. Balderrama, see Exh. 5, CTA rec. p. 106), ₱12,244.66 of which was disallowed on the ground that the rate of depreciation applied was excessive (Exh. 1, CTA rec. p. 101).

Municipal license and
Privilege taxes:

Petitioner claimed deductions of ₱76.80 and ₱100.00 representing municipal license tax and privilege tax, respectively, of C. M. Sison and T. Dominguez. These deductions were originally disallowed on the ground that they do not constitute expenses of the corporation (see Exh. E, CTA rec. p. 55). Later, however, they were allowed (see Exh. G, CTA rec. p. 74).

Penalties on deficiency
taxes - ₱40.69:

This disallowance of ₱40.69 representing penalties on deficiency taxes is not contested by petitioner.

In a letter dated November 24, 1953, petitioner contested the deficiency assessment and the tax credit (Exh. F, CTA rec. pp. 59-69). Upon reinvestigation, respondent, in his letter dated October 13, 1956, revised the assessment, increasing the tax credit of petitioner for 1950 to ₱1,447.00; modifying the deficiency assessment for 1951; but leaving unchanged the deficiency assessment for 1949 as embodied in his letter dated November 3, 1953 (Exh. G, CTA rec. pp. 73-74). The revised tax credit for 1950 and deficiency income tax for 1951 are computed as follows:

1950

Net income as per return	₱ 21,863.54
Deduct: Allowance deduction:	
Municipal license	24.00
Net income as per investigation	₱ 21,839.54
Amount of income subject to tax	₱ 21,839.54

Income tax due thereon		₱ 3,494.00
Less: Amount already assessed		4,941.00
Overpayment credited in 1951		(₱ 1,447.00)

1951

Net income as per return		₱181,880.30
Deduct: Allowable deductions:		
Municipal license	₱ 76.80	
Privilege tax	100.00	176.80
Net income as per investigation		₱181,703.50
Income tax due thereon		₱ 42,877.00
Less: Amount already assessed:		
	₱19,316.90	
Credit for overpayment in 1950	1,447.00	20,763.90
Deficiency income tax due		₱ 22,113.10

(See Exh. G, CTA rec. pp. 73-74.)

Again, in a letter dated October 19, 1956, petitioner protested the legality of the assessment contained in respondent's letter dated October 13, 1956 and reiterated its claim for the refund of the amount of ₱3,757.69 (Exh. H, CTA rec. p. 77), which protest and claim were denied by respondent in his letter dated November 2, 1956 (Exh. I, CTA rec. pp. 78-81). On December 5, 1956, the petition for review in this case was filed.

The issues to be resolved in this case are:

(1) Whether or not the right of respondent to collect the deficiency assessments in question has prescribed;

(2) Whether or not the amount of ₱11,237.85 representing the cost of a building situated at the corner of Azcarraga St. and Rizal Avenue which was subsequently

demolished on December 31, 1949 and a new building erected in its place, is deductible, as a loss, from petitioner's gross income for the year 1949;

(3) Whether or not the depreciations claimed by petitioner in its income tax returns for 1949, 1950 and 1951 are reasonable;

(4) Whether or not petitioner underdeclared the profits realized from the sale of some of its real properties; and

(5) Whether or not petitioner is entitled to a refund of ₱3,757.69 as overpaid income tax for 1950.

Petitioner, relying upon Section 331 of the Tax Code, contends that respondent's right to collect the deficiency assessment for the calendar year 1949 has already prescribed inasmuch as a period of 6 years, 7 months and 27 days has elapsed since the filing of its income tax return on April 18, 1950 to the filing of the petition for review on December 5, 1956.

Under Section 331 of the Tax Code, the Government had the right to assess income tax against petitioner, or institute an action in court to collect a tax without assessment within five years after April 18, 1950, or up to April 18, 1955. In the case at bar, the petitioner's income tax return for 1949 was filed on April 18, 1950, and the deficiency assessment for the same year was issued by respondent on November 3, 1953 or within five years after April 18, 1950. The assessment, therefore, was made within the period of limitation set forth in Section 331. Where the assessment was made within the period of limitation, as in the instant case, the Government may collect the tax by a proceeding in court within five years after the assessment of said tax, pursuant to Section 332(c) of the Tax Code, which we reproduce below:

> "Where the assessment of any internal-revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. x x x" (Emphasis supplied.)

Applying the provisions of Section 332(c), the Government had five years from and after November 3, 1953 or up to November 3, 1958 within which to institute an action in court to collect the tax. Treating the answer of respondent which was filed on January 19, 1957 as equivalent to a judicial action for the collection of the taxes in question (Collector v. Clement, et al., G. R. No. L-12194, January 24, 1959; Collector v. Solano, G.R. No. L-11475, July 31, 1958), the right of the Government to collect the deficiency income tax for 1949 has not prescribed.

The five-year limitation on a proceeding in court for collection of taxes provided for in Section 331 does not apply to the instant case because said limitation refers only to a judicial collection without assessment.

In the present case, the collection is based upon an assessment made by respondent.

It is, however, contended by petitioner that Section 332(c) does not apply to the case at bar because said section refers to the collection of internal revenue taxes in general and not to income taxes as held by the Supreme Court in the case of Collector of Internal Revenue vs. Jose Avelino and Court of Tax Appeals (G.R. No. L-9202, November 19, 1956); and because the provisions of Section 332 are "Exceptions as to period of limitation of assessment and collection of taxes" and refer expressly only to a case of "a false or fraudulent return with intent to evade tax or of a failure to file a return".

We made it clear in the case of Carlos Moran Sison and Priscila F. Sison vs. Collector of Internal Revenue, C.T.A. Case No. 337, February 26, 1958 that -

> "The only conflict between Section 51(d) on the one hand and Sections 331 and 332 on the other relates to the period of limitation upon the power to collect income tax by distraint and levy, and the Supreme Court rightly held that Section 51(d) being a special provision is the one applicable. With respect to the right to assess and collect income tax by judicial action, there is absolutely no conflict between the said provisions of law. Section 51(d), the special provision, being silent on the subject, Sections 331 and 332, the general provisions, must be held to apply. There is nothing in Sections 331 and 332 which excludes from their operation the right of the Collector of Internal Revenue to assess and collect income tax by judicial action. x x x"

From the finding that the right of respondent to collect the deficiency assessment for 1949 has not prescribed, it follows that the right to collect the 1951 deficiency assessment has equally not prescribed.

We come now to the second issue.

Petitioner's claim for deductible loss arising from the demolition of the "barong barong" is based upon Section 30 of the Tax Code and Section 77 of the Revised Income Tax Regulations No. 81 (same as Section 97 of Revenue Regulations No. 2 of the Department of Finance), pertinent portions of which are hereinbelow quoted:

> "Sec. 30. Deductions from gross income.- In computing net income there shall be allowed as deductions -
>
> x x x x
>
> "(d) Losses:
>
> "(2) By corporations.- In the case of corporation, all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise."
>
> "Sec. 77. Voluntary removal of buildings.- Loss due to voluntary removal or demolition of old buildings, x x x incident to renewals and replacements will be deductible from gross income. x x x" (Revised Income Tax Regulations No. 81.)

Respondent disallowed the claim for deduction on the theory that there being an intention on the part of petitioner at the time of purchase of the "barong barong" to demolish it to make way for the erection of a new structure, the undepreciated value thereof, instead of being deducted from gross income, should be added to the cost of the building replacing it and depreciated during the life of the new asset, in accordance with Section 97 of Revenue Regulations No. 2 of the Department of Finance, which reads:

> "Section 97. VOLUNTARY REMOVAL OF BUILDINGS.- Loss due to the voluntary removal or demolition of old buildings, the scrapping of old machinery, equipment, etc., incident to renewals and replacements will be deductible from gross income. When a taxpayer buys real estate upon which is located a building, which he proceeds to raze with a view to erecting thereon another building, it will be considered that the taxpayer has sustained no deductible expense on account of the cost of such removal, the value of the real estate, exclusive of old improvements, being presumably equal to the purchase price of the land and building plus the cost of removing the useless building." (Emphasis supplied.)

Article 142, Regulation 45, Treasury Department of the United States, which is a counterpart of Section 97 of Revenue Regulations No. 2 of the Department of Finance, was interpreted by the Circuit Court of Appeals, Second Circuit, of the United States in the case of Commissioner of Internal Revenue vs. Appleby's Estate, et al., 123 F(2) 700, thus:

> "x x x Losses are recognized only when they result from a closed transaction. If a building is demolished because unsuitable for further use, the transaction with respect to the building is closed and the taxpayer may take his loss; but if the purpose of demolition is to make way for the erection of a new structure, the result is merely to substitute a more valuable asset for the less valuable and the loss from demolition may reasonably be considered as part of the cost of the new asset and to be depreciated during its life, as is a broker's commission for negotiating a lease. x x x"

Considering the evidence on record, we conclude that at the time petitioner acquired the "barong barong" on February 28, 1949, it had no intention of demolishing the same for the purpose of constructing another building in its place. The subsequent demolition was due to the compelling order of the city engineer of Manila. This conclusion is supported by the positive and uncontroverted testimony of petitioner's general manager, Atty. Teodoro R. Dominguez, to the effect that petitioner had no intention to demolish the "barong-barong"; that said "barong-barong" had a rental income of about ₱3,730.00 per month; that petitioner at that time had no funds with which to finance the construction of a new building; that said "barong-barong" was demolished by order of city authorities, in consequence of which petitioner was compelled to put up another building; and that it had to borrow money from the bank to finance the construction of the new building, now known as Building Priscila IV.

It is uncontroverted that petitioner sustained a loss of ₱11,237.35 from the demolition of the "barong barong" in question. There is no showing that it was compensated for such a loss by insurance or otherwise. Consequently, said loss is allowable under the law, and should be deducted from petitioner's gross income in 1949 (Commissioner vs. Appleby's Estate, <u>supra</u>; Hotel McAllister, Inc. vs. U.S., 3 F Supp. 533; Union Bed & Spring Co. v. Commissioner, 39 F (2d) 383; Dayton C. vs. Commissioner, 90 F (2d) 767; Francis v. du Pont, BTA Memo. Op. Dkt. 86754).

For a clear disposition of the third issue, we shall take up the properties involved <u>in seriatim</u>.

<u>Building Priscila No. 2</u> -- The rate of depreciation adopted by petitioner on this building was allowed by respondent.

Building Priscila No. 3 -- It is a semi-concrete building, with galvanized iron roofing, hollow block exterior walls, wooden interior walls and wooden stairs covered with asphalt tiles. Its first floor is concrete, while its second and third floors are made of wood covered with asphalt tiles. The asphalt tiling of its stairs required the readjustment of its value on January 1, 1950. The first floor has been used as a store; the second and third floors have been occupied as offices. Petitioner estimated its life span to be 25 years. Respondent stepped it up to 30 years.

This building was acquired by petitioner from Atty. & Mrs. Carlos Moran Sison in exchange of shares of stocks in the Priscila Estate, Inc. at its assessed value of ₱70,343.00. In claiming depreciation, petitioner used its construction cost of ₱110,600.00 instead of ₱70,343.00 as basis for computing the depreciation, "because of the policy adopted by the Board of Directors of petitioner" of giving "justice to the spouses" by equating the assigned value of this property with its actual cost of construction. Respondent, however, computed the depreciation on the basis of ₱70,000.00 in 1949 and ₱70,343.20 in 1951.

Upon the uncontroverted evidence that the assigned value of Building Priscila No. 3 to petitioner was revaluated at ₱110,600.00, we rule that the depreciation should be computed on ₱110,600.00, depreciable within 25 years.

Building Priscila No. 4 -- This building is concrete, except the partitions which are made of wood. The roofing is made of galvanized iron. A part of the ground floor and the whole of the second and third floors are occupied by the Bohol Central Colleges and Secretarial School. The rest of the ground floor is occupied by hardware stores and a haberdashery shop. In determining its useful life, which was estimated to be 33-1/3 years, petitioner took into consideration the use for which it is being put to and the progress of architectural design. According to the testimony of petitioner's general manager, there are so many people - students - who go up and down the building in view of its being used as a school. It is pointed out on behalf of petitioner that a change in architectural design would make the building outmoded, thus reducing its economic usefulness. Respondent, however, increased the estimated life span of the building to 50 years.

In view of the character of the building, its use, and the changing architectural designs, we find the estimated life span of 33-1/3 years as reasonable.

It may be noted that respondent determined the cost of Building Priscila No. 4 to be ₱232,216.16 (see Exh. 6, CTA rec. p. 107). The construction cost of said building, however, is ₱232,500.00 (see Exh. K, CTA rec. p. 85). The latter amount should, therefore, be used as basis for computing the depreciation.

Baguio House -- This is a pre-war building located at Baguio City. There is no showing as to the materials of which the house is made. Considering the repairs made thereon subsequent to its acquisition in 1949, petitioner estimated its life to be 10 years.

Respondent calculated the same at 20 years. The estimate of respondent appears to be unreasonable, considering that the building in question was actually constructed before the war, and at the time petitioner acquired it in 1949, it had existed for not less than seven years. Consequently, we take it that the life span of the Baguio building is 10 years.

Sto. Cristo Building -- There is no controversy as to the valuation and estimated life of this property.

Rizal Avenue Building -- This property was constructed before World War II. The ground floor is made of cement and tiles, while the upper floor including the posts are made of wood. Its partitions are made of adobe mixed with cement. Petitioner estimated its life to be ten years. Respondent increased the life span to 20 years.

Considering the age and the materials with which the building is made, we believe that its estimated life should be 10 years.

Ilaya Building -- The Ilaya property is an old building which is a Spanish type accessoria. It is partly made of adobe and partly of wood. The roofing consists of galvanized iron. It is occupied by Chinese who sell salted fish. Petitioner estimated its economic life at ten years, but respondent increased the estimate to 20 years.

In view of the type of the building, the materials of which it is made, and its use, we find its life span reasonably fixed at 10 years.

Camarines-Iril House -- This building is an old Spanish type residential house. The testimonial evidence shows that it may have existed even as far back as the Spanish times. It is already dilapidated. In 1949, this building was depreciated at 10% which rate was allowed by the Bureau of Internal Revenue. However, about December, 1950, its tenants vacated it as a result of which, its windows and doors were stolen. No repairs were ever made and petitioner has no intention to make further repairs. It is now occupied by petitioner's janitor. On this account, petitioner, without previous consultation with respondent, re-estimated its life to be four years beginning from 1951 and also increased the rate of depreciation to 25%.

The rate of depreciation taken by petitioner for 1951 is not consistent with that taken by it in 1949 and 1950. Section 105 of Revenue Regulations No. 2 of the Department of Finance, which implements Section 30(f) of the Tax Code, requires that the taxpayer adopt a reasonable consistent plan. The reduction in economic usefulness of the building due to pilferage does not justify departure from a reasonable consistent plan nor merit an increase in the rate of depreciation. Loss due to pilferage of some portions and accessories of a building does not constitute loss due to ordinary wear and tear. Hence, we affirm respondent's determination on this point.

Various buildings -- With respect to the garage located at Pennsylvania St., a "barong-barong" at Azcarraga St. (now Building Priscila No. 6) and another "barong-barong" situated along Evangelista St., all in the city of Manila, petitioner's claim for depreciation therefor were allowed by respondent.

Office library books -- They consist of books on real estate, but mostly are law books. Petitioner claimed a deduction of the amount of ₱731.50 for 1950 as depreciation for library books valued at ₱4,027.13 at the rate of 17%. It estimated the life of said books to be six years. In 1951, petitioner re-adjusted the value of said books at ₱3,833.43 and re-estimated their life to be five years, thereby claiming depreciation therefor in the amount of ₱766.69, computed at the rate of 20%. In the case of the new books, it claimed depreciation for the whole year in spite of the fact that they were purchased and possessed by petitioner in 1951 for less than 12 months. There is evidence (Exh. 6, CTA rec. p. 107) that the rate of depreciation employed by petitioner in 1951 was reduced by respondent to 10%, thereby resulting in a disallowance of ₱340.45.

Petitioner's justification for using a depreciation rate of 17% and then 20% is the fact that law books, by reason of the passage of new laws, become "un-up-to-date" (to borrow petitioner's terminology).

We are of the opinion that the determination of respondent should be sustained. The economic usefulness of books on real estate and law books may reasonably be estimated at ten years. Five years is too short. While it is true that the passage of new laws necessitates the revision of law books, it is equally true that law books continue to be in use even after the passage of a law repealing or modifying the law of which they deal. For it cannot be denied that old provisions found in old books are most often consulted in researches.

The depreciation allowed should, therefore, be ₱402.72 and ₱426.24 for 1950 and 1951, respectively.

Office furniture and fixtures -- In 1949, petitioner, without segregating the furniture and fixtures involved, took their total cost of ₱5,000.00 and then estimated their life to be 4 years. He claimed a deduction for depreciation in the sum of ₱1,250.00 at the rate of 25%. In view of the books, which were purchased in 1951, he re-adjusted the capital basis for 1951 from ₱5,000.00 to ₱7,665.00 and claimed a depreciation of ₱1,533.00 at the rate of 20%. In 1951, it used the same rate (20%) as in 1950, but re-adjusted the capital basis to ₱6,237.00 and claimed a depreciation of ₱1,247.40. For these latter years, the estimated life span of the furniture and fixtures was 5 years.

On the other hand, respondent considered the respective sums of ₱5,000.00, ₱9,020.00 and ₱9,020.00 as capital bases of the furniture and fixtures for the years 1949, 1950 and 1951, and estimated their life span at

10 years, thereby disallowing certain percentages in petitioner's claims for depreciation.

In this jurisdiction, the taxpayer must demonstrate the reasonableness of his claim for depreciation deduction; he must prove affirmatively the correct ultimate facts supporting the allowance claimed (Henry F. Cochrane, 23 BTA 202; Uncasville Mfg. Co., 19 BTA 920, aff'd on this point, 55 F(2d) 893, cert. den. 286 U.S. 545, 76 L. ed. 1282, 52 S. Ct. 497; Denver Powerine Co., 7 BTA 1186; San Angelo Telephone Co., 6 BTA 1189). In the case at bar, no evidence was adduced as to the nature of the furniture and fixtures, their itemized costs, their uses and other correct ultimate facts supporting petitioner's depreciation claim. In default of such evidence, we cannot determine the amount of depreciation which was sustained during these years. Hence, we are compelled to affirm respondent's determinations of ₱416.67, ₱902.00 and ₱902.00 as allowable depreciations for 1949, 1950 and 1951, respectively.

<u>Transportation equipment</u> -- In 1949, petitioner claimed a depreciation deduction for its automobile at the rate of 20%. However, in view of the purchase of new tires in 1950, petitioner re-adjusted the value of the automobile and depreciated the same at 25% during the years 1950 and 1951. The re-adjusted value was arrived at by deducting the amount of depreciation allowed in 1949 (₱1,728.30) from the depreciable capital

of the automobile (₱8,641.54) and the difference was added to the cost of new tires (₱314.55).

On the other hand, respondent allowed the claimed depreciation deduction for 1949. But, for the years 1950 and 1951, he added the cost of the tires to the cost of the automobile, thereby obtaining a total of ₱8,956.09 which he depreciated at 20%.

Respondent's determination for 1950 and 1951 is erroneous. In 1949, the estimated life of the automobile was five years beginning that year. In 1950, therefore, the same automobile had an estimated remaining life of only four years. So that, when its value was re-adjusted as of 1950, the depreciation should be spread during the remaining four years of its existence. After re-adjustment, the undepreciated value of the automobile in 1950 was ₱7,227.79 with four more years of expected useful life. It, therefore, would be proper that the rate of depreciation should be 25%.

The determination of respondent would in effect depreciate said added value of ₱314.55 in five years, applying the rate of 20%, but allow the taxpayer the chance to recover, through depreciation, only up to 80% of said added value or the amount of ₱251.64 inasmuch as petitioner had only four years more during which it could depreciate the value of the automobile, plus the cost of the new tires.

> "x x x in determining the depreciation allowance, due weight must be given to the taxpayer's accounting policy with respect to repairs, maintenance, replacements, and charges to the capital account and to the depreciation reserve. x x x However, while the accounting policy may require application and use of a different rating, that is not equivalent to saying that such an accounting policy could alter the useful life in years. In fact it is the fixed life of the asset which requires a different rate under varying accounting policies in order to have the investment in the asset returned by the end of such useful life." (Mertens, Law of Federal Income Taxation, Vol. 4, Sec. 23.46 pp. 62-63.)

As regards the fourth issue, it is to be noted that respondent determined the profit allegedly realized from the sales of several properties on the basis of their assessed value for which they were transferred by the Sison spouses to petitioner in exchange of the latter's shares of stock.

Petitioner, however, denies earning profit from the sales for the reason that its Board of Directors, in two resolutions dated July 1, 1949, resolved that the assigned value of the Sison properties to petitioner be increased from their assessed value to their selling price to third parties, and that the difference be delivered to the Sison spouses. Hence, it is contended that it is not liable for income tax on the profits, which inured to the benefit of the Sison spouses.

To our mind, petitioner should not be required to include in its gross income whatever profits were realized on the sale of various properties which, by mandate of its Board of Directors, should inure to the benefit of the Sison spouses. For, in effect, there was no income to the corporation.]

In resumé, the income tax liability of petitioner for 1949, 1950 and 1951 should be computed as follows:

1949

Net income per return		₱44,156.58
Add:		
[1]Overclaimed depreciation ..	₱10,159.38	
Residence taxes of Mr. & Mrs. Sison	261.00	10,420.38
Net taxable income		₱54,577.06
Tax due thereon (12%)		₱ 6,549.24
Less: Tax already paid		5,298.80
Deficiency tax due		₱ 1,250.44

[1]Overclaimed depreciation:

Bldg. Priscila No. 2	₱ 5,000.00
Bldg. Priscila No. 3	739.71
Baguio House	739.71
Sto. Cristo Bldg.	666.66
Rizal Avenue Bldg.	541.66
Ilaya Bldg.	333.33
Camarines-Ipil House	416.66
Pennsylvania Garage	40.00
Barong-barong at Azcarraga	466.66
Barong-barong at Evangelista ...	166.66
Office furniture & fixtures	833.33
Transportation equipment	288.05
T o t a l	₱10,159.38

1950

Net income per return		₱30,879.83
Add:		
Overclaimed depreciation:		
Office library books	₱328.78	
Office furniture and fixtures	631.00	959.78
		₱31,839.61
Less:		
Underdeclared loss on sale of Bldg. Priscila No. 2		33,659.40
Net taxable income		(₱ 1,819.79)
Tax already paid		₱ 4,941.00
Less: Deficiency tax for 1949		1,250.44
Balance of overpaid income tax		₱ 3,690.56

1951

Net income per return		₱96,585.31
Add:		
[1]Overclaimed depreciation	₱3,185.85	
Penalties on deficiency taxes	40.69	3,226.54
Net taxable income		₱99,811.85
Tax due thereon (20%)		₱19,962.37
Tax already paid		₱19,317.00
Deficiency tax still due		₱ 645.37
Balance of overpaid income tax for 1950		3,690.56
Amount refundable		(₱ 3,045.19)

[1]Overclaimed depreciation:

Camarines-Ipil house	₱2,500.00
Office library books	340.45
Office furniture & fixtures	345.40
T o t a l	₱3,185.85

Finally, we come to the issue relative to the refund of ₱3,757.69. As computed above, petitioner is entitled to a refund of only ₱3,045.19 instead of ₱3,757.69, without interest (Collector v. St. Paul's Hospital of Iloilo, G. R. No. L-12127, May 25, 1959; Collector v. J. M. Sweeney, et al., G. R. No. L-12178, August 21, 1959).

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision dated November 2, 1956 of respondent Collector (now Commissioner) of Internal Revenue is hereby modified. Respondent is hereby ordered to refund to petitioner Priscila Estate, Inc. the amount of ₱3,045.19 as overpaid income tax for 1950. Without costs.

SO ORDERED.

Manila, November 29, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I ABSTAIN:

ROMAN M. UMALI
Associate Judge