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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMADO A. AMADOR, JR.,
Petitioner,

- versus - C.T.A. CASE NO. 3281

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

2/28/89

D E C I S I O N

Assailed in this petition for review is the decision of respondent Commissioner of Internal Revenue holding petitioner Amado A. Amador, Jr., liable for the payment of P22,365.87 representing deficiency income for the year 1977.

The facts are simple.

Petitioner is a lawyer. As a result of the routine verification of his income tax return for the year 1977, there was found due from him the amount of P22,365.87 as deficiency income tax arising from disallowed deductions, to wit:

Office rental	P 8,929.66
Law journals	10,893.00

Repairs and maintenance	5,501.41
Legal consultation fees	17,300.00
Employees transportation	172.48
Gasoline, oil and grease	3,164.55
Telephone bills	538.99
Office supplies	5,341.42

A notice of assessment was duly issued on October 31, 1980. While petitioner requested for a re-examination of the assessment, respondent reiterated and demanded the payment of the aforestated deficiency tax in a letter dated April 2, 1981.

Hence, th present recourse.

The only question presented for resolution is whether or not the disallowance by respondent of the claimed deductions of petitioner is proper.

We will discuss these claimed deductions in *seriatim*.

Office Rentals

Petitioner claimed a deduction of office rentals amounting to P14,400.00. Upon re-examination, however, the amount of P8,929.66 was disallowed by respondent for lack of supporting papers and the fact that the receipts presented

(Exhs. H-2 and H-3) pertain to the year 1978 while the expenses claimed are supposed to have been incurred in 1977.

We agree.

From his 1977 income return and the evidence presented, it appears that petitioner did not keep the prescribed books of accounts and other records; or his records are inadequate. His "accounting system", if any, therefore turned on cash receipts and disbursements. As can be gleaned from his records, petitioner's income was reported when received and his deductions claimed when paid. Since petitioner is on the calendar year basis - and individual taxpayers must always report solely on this basis - he can not claim as deduction in 1977 office rentals paid in 1978. The amount of P8,929.66 paid in 1978 should therefore be disallowed.

Law Journals

Petitioner claimed P11,438.00 as deductible expense under this item but after re-investigation the amount of P10,893.00 was disallowed by respondent because "the receipt is a mere scrap of paper without number, date, place and where purchased."

Respondent concedes at last that petitioner has a record of this expense although it was not allegedly properly substantiated as the receipt was not numbered and dated and place of purchase not indicated. Where a taxpayer claimed deductions for certain expenses but no records were available, the same having been destroyed after the lapse of five years, the deduction may be allowed considering the testimony of the accountant as to the nature of those expenses, which testimony was not contradicted by the Government. *(Basilan Estate vs. Commissioner of Internal Revenue, L-22494, Sept. 5, 1967, 21 SCRA 16.)*

Record of this item was available, as the receipt was presented by petitioner, and the testimony of petitioner as to the nature of the expense was not contradicted by respondent. It has been established the item purchased by petitioner was a second hand set of Philippine Reports, Volumes 1 to 75. It was not purchased from a regular bookstore but from a private individual by the name of Mrs. Ofelia Casacian of Lucena City considering that Philippine Reports, Volumes 1 to 75 were no longer available from regular book stores. Petitioner had the books in his office and offered to show the same to the examiner. (t.s.n., pp. 13-16, hearing of May 8, 1984.)

The amount of P10,893.00 should therefore be allowed as deductible expense.

Repairs and Maintenance of the Law Office

The amount claimed as deductible expense was P6,348.76 but only the amount of P847.35 was allowed. The balance of P5,501.41 paid to the master carpenter who undertook the repairs is covered by a receipt signed by the master carpenter, which receipt however is not printed, numbered and registered with the Bureau of Internal Revenue, was disallowed.

Considering that petitioner has presented documentary proof of this expense; his testimony that the item was legitimately paid for the repair and maintenance of his law office was not contradicted by respondent; and carpenters who undertake minor repairs do not issue official receipts prepared in accordance with the requirements of the Bureau of Internal Revenue, the balance of P5,501.41 should be allowed. If a taxpayer's claimed deductions for certain expenses but no available records were available were allowed considering the testimony of the accountant as to the nature of these expenses, which testimony was not contradicted by the Government (***Basilan Estates vs. Commissioner of Internal Revenue, supra***), with more reason should the claimed deduction of petitioner for repairs and maintenance of his law office be allowed considering that his records of those expenses were available and petitioner's testimony as to the nature of these expenses was not contradicted by respondent.

Legal Consultation Fees

Respondent's examiners disallowed the amount of P17,300 as alleged legal and consultation fees for the reason that the receipts presented by petitioner are mere bond paper purportedly signed by the persons receiving the amount.

As explained by petitioner during the hearing of this case on March 18, 1983:

Q. Who issued this Exhibit "K-1" to you?

A. This receipt was issued by Atty. Renato Callanta who is now the President of the Quezon City Chapter of the Integrated Bar of the Philippines.

I had to ask for the help of Atty. Callanta in a certain case which is with the Bureau of Customs. Although I have been practicing for a long time. I never appeared in any proceeding with the Bureau of Customs and where a client of mine was involved with a legal action with the Customs. I requested Atty. Callanta, who is knowledgeable in the Bureau of Customs so I shared with him a certain percent of the fees I received in that case. I paid Atty. Callanta Two Thousand Three Hundred Pesos.

Q. Whose signature appears above the name Renato Ma. Callanta?

A. This is his signature.

Q. How did you know?

A. I was present when it was signed.

Q. In connection with Exhibit "K-2", tell this Honorable Court whose signature appears in said exhibit?

A. This is the signature of Atty. A. Galang.

Q. How did you know that is the signature of Atty Galang?

A. This was also signed in my presence.

Q. Please explain to this Honorable Court why you paid consultation fee to Atty. Galang?

A. In 1977, I was requested by my client Vicor Music to negotiate a joint venture in Japan. The first time I went to Japan I had a lot of difficulty. The Japanese lawyer of Sony kept on telling me that certain proposal of mine could not be agreed to by them because it was against Japanese laws. On the other hand they had with them Atty. Feliciano of the

> prestigious Sycip Feliciano in Makati who is v ry knowledgeable that I felt I was at t e disadvantage so I retained the services of Atty. Galang for Fifteen Thousand Pesos.
>
> He was not only knowledgeable in Japanese laws but he spoke Japanese well. This P15,000.00 was of course part of the fees I received from Vicor Music. I shared part of my fee to Atty. Galang. This receipt was signed in Tokyo, if I remember correctly.

(t.s.n., pp. 12 to 15, hearing of March 18, 1983)

Again, considering that these legal consultation fees were properly substantiated, petitioner's records of these claimed deductions were available and presented in Court as Exhibits "K", "K-1" and "K-2", and petitioner's testimony as to the nature of these expenses was not controverted or contradicted by respondent, the amount of P17,300 as legal and consultation fees should be allowed. (***Basilan Estate vs. Commissioner of Internal Revenue***, supra.)

Gasoline , Oil and Grease

In this item of gasoline, oil and grease, petitioner claimed a total deduction of P5,462.35, but respondent's examiner allowed only P2,297.80 which is the amount supported by the official receipts submitted by petitioner. The sum of P3,164.55 was disallowed for being unsupported.

Petitioner is not entitled to claim a deduction for his expenses in connection with the use of his car from his home to his office and back because such expenses are personal. And if the car was used for purposes other than business or in the exercise of his profession, the expenses are personal expenses, and therefore, not deductible. He is, however, entitled to a deduction of that portion of his expenses in connection with the use of his car which is related to the exercise of his profession. Assuming that petitioner used his car two-thirds of the time for business and one-third for personal purposes, and as claimed by him he spent P5,462.35 in the taxable year under consideration for gasoline, oil and grease, only 2/3 of P5,462.35, or P3,641.56 can be claimed by petitioner from his gross income (See ***Jamir vs. Collector of Internal Revenue***, *L-16552, March 30, 1962, 4 SCRA 718.*)

While a taxpayer is not relieved from the burden of substantiating his claimed deductions, care should be taken to permit reasonable determination of the amount which may be claimed as deduction, provided that there is proper basis for some allowance. Disallowing amounts claimed for deduction merely because there is no sufficient or available documentary evidence which will establish the precise amount beyond a reasonable doubt ignores commonly recognized business practices as well as the fact that proof may be established by credible oral testimony. Where there is evidence that the taxpayer has actually incurred expenses, and there is no proof of the exact amount actually spent, the Commissioner should make as close an approximation as he can, bearing heavily if he chooses upon the taxpayer whose inexactitude is of his own making. ***(Cohan vs. Commissioner**, 39 F. 2d. 540,* cited in ***Visayan Cebu Terminal vs. Collector of Internal Revenue**, L-12798, May 30, 1960, 108 Phil. 320;* ***Gancayco vs. Collector of Internal Revenue**, L-133 5, April 20, 1961, 1 SCRA 980;* ***Zamora vs. Collector of Internal Revenue**, L-15280 & L-15289-90, May 31, 1963, 8 SCRA 163.)*

Employees Transportation & Telephone Bills

The same could be said of the employees transportation expenses of P172.48 and telephone bills in the amount of P538.99 which were disallowed by respondent's examiner for lack of supporting papers. There is proper basis for their allowance as petitioner is admittedly engaged in the practise of his profession as a lawyer. He has a law office and it is hard to conceive of a law office without a telephone. As a matter of fact, it has been established that the telephone was listed in the telephone directory in the name of petitioner and respondent's examiner had been using it at the time she was examining petitioner's income tax return. (t.s.n., pp. 35-37, hearing of May 8, 1984.) And with respect to the employees transportation expense of P172.48, the amount is too insignificant that it can hardly be said that there is no proper basis for its allowance. As stated above, disallowing amounts claimed for deduction, especially when there is basis for their allowance, merely because there is no available documentary evidence which will establish the precise amount beyond a reasonable doubt ignores commonly recognized business practices as well as the fact that proof may be established by credible oral testimony. As testified by petitioner: (t.s.n., p. 18, hearing of March 18, 1983.)

> "I had at that time a secretary who held the petty cash and I had two (2) messengers. Everyday, the messengers would mail registered letters in the post office and file pleadings in Courts and sometimes bring documents to and from clients and other matters which I asked them to do."

Office Supplies

On this item of office supplies in the amount of P5,341.42, respondent's examiner testified that the expenses were disallowed because they were unsupported. (t.s.n., p. 11, hearing of May 8, 1984.) Where a taxpayer claimed deductions for certain expenses but no records were available, the deduction may be allowed considering the testimony of the accountant as to the nature of those expenses, which testimony was not contradicted by the Government. (***Basilan Estates vs. Commissioner of Internal Revenue***, *supra*.) Granting that no records are available, no testimony whatsoever regarding the nature of these expenses was presented by petitioner, although petitioner himself testified, as shown above, on the nature, amount and/or basis of the allowance of his other claimed deductions. The rule has been established that the bare statement of a taxpayer that an item of expense is ordinary and necessary, unaccompanied by adequate evidence, has no weight with the Commissioner or with the courts. (***De Vera vs. Collector of Internal Revenue***, *CTA Case No.* [illegible] *March 23, 1959*, ***Basilan Estates vs. Commissioner of Internal Revenue***, *supra*.)

Disallowing amounts claimed for deduction, as we have said above, merely because there is no available documentary evidence which will establish the precise amount beyond a reasonable doubt ignores commonly recognized business practices but proof should be established by credible oral testimony, which was not done in this item. Again, petitioner is engaged in the practice of his profession as a lawyer and invariably he carried supplies but taxpayers carrying materials and supplies on hand should include in expenses the charges for materials and supplies only to the amount that they are actually consumed and used in the operation during the year for which the return is made, and provided that the cost of such materials and supplies had not been deducted in determining the net income for any previous year.

(Sec. 67, Rev. Regs. No. 2.) No evidence whatsoever, oral or documentary, to this effect was presented by petitioner. As aptly stated by respondent, deductions are matters of legislative grace and therefore the taxpayer seeking a deduction must be able to prove that he is entitled to the deductions which the law allows.

The item of office supplies in the amount of P5,341.42 cannot therefore be allowed.

Conclusion

Accordingly, petitioner's deficiency income tax for the year 1977 is computed as follows:

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Net income per return		P11,115.14
Add: Unallowable deductions:		
Office rental	P8,929.66	
Gasoline, oil and grease	1,820.79	
Office supplies	5,341.42	P16,091.87
Net income per decision		P27,207.01
Less: Exemptions		6,000.00
Net taxable income		P21,207.01
Income tax due thereon		P 3,206.00
Less: Amount paid		P 280.00

Balance of tax due	₱2,326.00
Add: Interest from 4-16-78 to 10-31-80	₱1,641.07
Total amount due and collectible	₱3,967.07

WHEREFORE, petitioner Amado A. Amador, Jr., is hereby ordered to pay to respondent Commissioner of Internal Revenue the amount of ₱3,967.07 as deficiency income tax for the year 1977, plus surcharges and interest incident to delinquency pursuant to the provisions of Section 51(e)(2)(3) of the applicable National Internal Revenue Code, as amended.

SO ORDERED.

Quezon City, Metro Manila, February 28, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals