REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. SORIANO Y CIA.,
Petitioner,

- versus - C.T.A. CASE No. 2176

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

July 25/73

D E C I S I O N

Petitioner seeks the review of the decision of respondent Commissioner of Internal Revenue, dated September 10, 1970, assessing against and demanding from petitioner payment of ₱9,615.82 as 1958 deficiency income tax and penalties.

Petitioner, a domestic corporation, is engaged in management services as the manager of San Miguel Corporation, Atlas Consolidated Mining, and other affiliated corporations.

The 1958 income tax return of petitioner was investigated by Revenue Examiner Jesus Llamas who recommended that petitioner be assessed ₱6,913.00 as deficiency income tax on the disallowance of ₱24,334.74 representing donations and contributions in excess of 3% of the corporation's net income allowable as deduction from gross income under Section 30(h) of the Revenue Code.

Petitioner's case was later on referred for further investigation to Revenue Examiner Romeo de Guia who recommended that petitioner be assessed for deficiency income tax of ₱8,207.00 due to the disallowance of the following claimed deductions:

Prior years adjustment	₱ 5,063.00
Donations & contributions in excess of 3%	24,282.85
Total adjustment	₱29,345.85

(Exhs. 3 & 3-B, pp. 54-57, BIR rec.)

Subsequently, petitioner was assessed for deficiency income tax and penalties amounting to ₱9,684.26. Petitioner disputed the said assessment. Due to said protest, a reinvestigation was conducted by Revenue Examiner Eleocadio Suarez who recommended that petitioner be assessed for deficiency income tax of ₱9,615.82 due to the disallowance of the following items:

Prior years adjustment	₱ 4,815.00
Donations & contributions in excess of 3%	24,290.29
Total adjustment	₱29,105.29

(Exhs. 6 & 6-B, pp. 71-74, BIR rec.)

Accordingly, petitioner was assessed for deficiency income tax of ₱9,615.82 which was followed by respondent's letter of demand. In reply thereto, petitioner proposed to respondent that out of the disallowance of ₱29,105.29, it be allowed to deduct ₱16,225.00 from its gross income and, in turn, it will concede the disallowance of the balance and pay the deficiency income tax due thereon. On December 5, 1969, respondent denied petitioner's proposal and reiterated his demand for payment of ₱9,615.82. On January 28, 1970, petitioner requested that it be allowed to present evidence to establish the deductibility of the questioned expenses. On July 30, 1970, respondent agreed to petitioner's request provided that: (a) it will submit its evidence within fifteen days from receipt of respondent's letter; and (b) it will execute a waiver of the statute of limitation up to June 30, 1975. Upon failure of petitioner to comply with the said conditions, respondent denied petitioner's request. Hence, this appeal.

Petitioner has conceded the disallowance of ₱90.00 as 1957 licenses and ₱4,725.00 as 1957 Geological Service Fee (p. 18, CTA rec.).

The sole issue posed for resolution is whether or not the amount of ₱24,290.29 representing contribution in excess of 3% of the corporation's net income allowed under Section 30(h) of the Revenue Code is deductible as ordinary and necessary business expense under Section 30(a)(1) of the same Code.

Petitioner contends that most of the excess charitable contributions could qualify as deductible ordinary and necessary business expenses under Section 30(a)(1) of the Revenue Code. Respondent, however, claims that they are purely charitable contributions and not business expenses because petitioner failed to show that such contributions were ordinary and necessary business expenses in carrying out a trade or business.

The issue posed for consideration is of first impression in this jurisdiction. However, in the United States from where our income tax law was patterned, charitable contributions in excess of the 3% limit authorized by law may be deducted from gross income provided they are ordinary and necessary business expenses. To be deductible from gross income, a contribution must have some reasonably proximate relation to the taxpayer's business. (4 Merten's Law of Federal Income Taxation, par. 25.115, 1960 ed.) And to show this relationship, there must be evidence showing that the contributions were made to promote petitioner's business and that they could be reasonably expected to result directly in a business benefit. (Bishop Trust Co., Ltd. vs. Comm. of Int. Rev., 36 BTA 1173; Helvering vs. Evening Star Newspaper Co., 78 Fed. (2d)604, certiorari denied, 296 U.S. 628; Merchants National Bank of Mobile vs. Comm., 90 Fed. (2d)223.7 Moreover, the evidence must be clear in showing that the donation given for charitable purposes will give proximate benefit to the taxpayer. (United States Potash Co., 29 TC 1071.)

In the leading case of Welch v. Helvering, 290 U.S. 111 (1933), the U. S. Supreme Court, in determining what is ordinary business expense, stated that the decisive distinction are those of degree and not of kind. But the court adds: "One struggles in vain for any verbal formula that will supply a ready touchstone. The standard set up by the statute is not a rule of law; it is rather a way of life. Life in all its fullness must supply the answer to the riddle."

Aside from being ordinary, the expense should be necessary. An expense is generally considered necessary where the expenditure is appropriate or helpful in the development of the taxpayer's business or that the same is proper for the purpose of realizing a profit or minimizing a loss. (Visayan Cebu Terminal Co., Inc. vs. Collector of Internal Revenue, CTA Case No. 128, June 29, 1957.)

Petitioner's assessment for deficiency income tax arose from the disallowance of the 1958 contributions in excess of the 3% allowed by law to a corporation. In a protest, petitioner claimed that it committed error in classifying in its income tax return the total amount of ₱44,707.32 as donation. Actually, only ₱20,385.45 pertained to charitable contributions and the balance of ₱23,933.87[1] represents promotional or business expenses (pp. 64-67, BIR rec.).

The only evidence presented by petitioner tending to show that the excess contributions are ordinary and necessary business expenses, was the testimony of its Assistant Vice-President, Mr. Ramon A. Pedrosa. He testified that the ultimate criterion in making contributions or donations is whether the same "will impel the public through these contributions or the recipients themselves x x x to further patronize our products or products of corporations managed by A. Soriano y Cia." (pp. 7-8, t.s.n.)

This uncorroborated testimony is insufficient to justify the conclusion that the excess contributions were ordinary and necessary business expenses. It is true that said contributions will create goodwill or project a good image for the corporations managed by petitioner. However, as to the extent the contributions actually benefited or promoted petitioner's business was not established. The testimony

[1] Petitioner concedes that the sum of ₱338.00 is not deductible business expense having been given to individual (p. 65, BIR rec.).

of Mr. Pedrosa that petitioner's contributions will impel the public to further patronize its clients' products is at most a mere conjecture. The parol evidence falls short of establishing petitioner's proposition because no proof was adduced showing that the business of the corporations under its management was boosted by petitioner's contributions.

As petitioner and the corporations managed by it were engaged in different kinds of business such as investment, purchase and sale, agriculture, mining, insurance, etc., there must at least be a showing that petitioner's contributions resulted in increased dividends, volume of sales, subscriptions, number of insured, and the like. If any benefit accrued to the corporations managed by petitioner, it is so indirect and remote to justify a finding that petitioner's contributions were necessary and ordinary expenses in carrying on a trade or business within the contemplation of Section 30(a)(1) of the Revenue Code. It has been said that:

> x x x The benefits which petitioner derived were of the same character as those which flowed to every other corporation and citizen of the community. While we have no doubt that petitioner did derive benefit from these civic improvements, we are of the opinion that <u>the benefit was indirect rather than direct</u> x x. (American

Rolling Mill Co. vs. Comm. of Int. Rev., 14 BTA 529, 536-537, underlining supplied.)

> The other items claimed fall within the same category, are governed by the same principles. It is certainly true that the evidence supports the view that it was good business for the bank to make the contributions which it did make, or rather, that it would have been bad business for it not to have made them, <u>but the good effect of making, and the bad effect of not making, them would have been felt not immediately and directly, but remotely and indirectly as a general persistent and persuasive influence, rather than as a direct consideration paid or withheld</u>. This is but to say that there are many things in the nature of community help which a business can do or leave undone, which indirectly affect it, and that a generous, a public spirited attitude, expressing itself in contributions and donations to worthy local causes, is a business asset to a bank, while the opposite attitude is a handicap. (Merchants Nat. Bank vs. Comm. of Int. Rev., 90 Fed. (2d) 223, 224, underscoring supplied.)

Petitioner submitted two (2) lists of the donees or beneficiaries of its contributions and the amount received by each. The contributions in the first list are allegedly charitable in character and deductible under Section 30(h) of the Revenue Code; while the contributions in the second list are allegedly for business (promotional) purposes and, therefore, deductible under Section 30(a)(1) of the same Code. An examination, however, of the said lists shows no appreciable difference as to the nature and purpose of petitioner's contributions. A cursory reading of the lists in question gave enlightening information as follows:

__1st List__ (donations for charity)

1. Philippine National Red Cross
2. Ermita Church
3. Foundation for the Blind
4. Obando Puericulture Center
5. Cultural Foundation of the Phil.
6. Boys Town - Iloilo City
7. Manila Cathedral
8. Sta. Theresa College

(pp. 113-114, BIR rec.)

__2nd List__ Donations for business purpose)

1. Feast of Our Lady Lourdes
2. St. Luke's Hospital
3. Malacañang Christmas Festival
4. Chamber of Commerce
5. De la Salle College - Christmas Drive
6. Cancer Educational & Fund Drive
7. Tondo Welfare Club
8. Philippine Association for the Blind

(pp. 111-112, BIR rec.)

From the foregoing lists of donees or beneficiaries, it can readily be seen that they are associations or organizations devoted mainly either to charitable, religious, educational, athletic, or cultural purposes. Since petitioner submitted the lists of donees only __after__ it has been assessed by respondent for deficiency income tax resulting from the disallowance of the excess charitable contributions, we are inclined to believe that at the time the donations or contributions were made by petitioner, it was primarily motivated by a desire to contribute to worthy causes to establish good will rather than direct or proximate business benefit of its clients. Consequently, we hold petitioner liable for the sum of ₱13,484.97, representing 1958 deficiency income tax and penalties, computed as follows:

Net income per return		₱631,045.49
Add: Unallowable deductions:		
Prior years adjustment ...	₱4,815.00	
Donations & contributions in excess of 3%	24,290.29	29,105.29
Net income subject to tax ...		₱660,150.78
Income tax due thereon		₱176,842.00
Less: Amount already assessed		168,693.00
Balance		₱ 8,149.00
Add: ½% monthly interest (18%)		1,466.82
T o t a l		₱ 9,615.82
Add: 5% surcharge on ₱8,149.00		407.45
1% monthly interest from 11-29-65 to 11-29-68 (36%)		3,461.70
TOTAL AMOUNT DUE AND COLLECTIBLE		₱ 13,484.97

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is affirmed. Consequently, petitioner is hereby ordered to pay respondent or his authorized representative the amount of ₱13,484.97 as 1958 deficiency income tax and penalties. With costs against petitioner.

SO ORDERED.

Quezon City, July 25, 1973.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge