REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

WESTERN PACIFIC CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 720

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

DECISION

This is an appeal from the decision of the Commissioner of Internal Revenue requiring the petitioner Western Pacific Corporation to pay the amount of ₱3,731.00 as deficiency income tax for the year 1953.

On February 27, 1954 (Exh. 1-A, BIR rec. p. 36), petitioner, a domestic corporation engaged in the business of importing and general merchandising, filed its income tax return for the year 1953 (Exhs. A & 1, BIR rec. p. 36), setting up as deduction claims, among others, the sums of ₱8,265.82, denominated "Development expenses" in its schedule of general and administrative expenses, and ₱10,387.50 representing bad debts written off (Exh. A-5, BIR rec. p. 38).

After an investigation of petitioner's income tax liability for the years 1952 through 1955 (see BIR rec. pp. 2, 7, 9, 11 & 14), respondent, on March 2, 1959, issued a deficiency assessment against petitioner in the amount of ₱3,731.00, computed as follows:

115

Net income per return		₱21,991.33
Unallowable deduction and additional income:		
Development expenses	₱8,265.82	
Bad debts written off	10,387.50	18,653.32
Net income per investigation		₱40,644.65
Income tax due thereon		₱ 8,129.00
Less amount already assessed		4,398.00
Deficiency tax due		₱ 3,731.00

(Exh. 6, BIR rec. p. 52; Exh. 7, BIR rec. p. 115)

Subsequent requests for withdrawal of the deficiency assessment having been denied by respondent, petitioner interposed the instant appeal.

The issues raised in this case are:

(1) Whether or not the right of respondent to assess the deficiency tax in question has prescribed; and

(2) Whether or not the "development expenses" in the amount of ₱8,265.82 and bad debts written off in 1953 amounting to ₱10,387.50, are deductible from petitioner's gross income for 1953.

Petitioner contends that the right of respondent to assess the deficiency income tax in question has prescribed.

The income tax return of petitioner for the year 1953 was filed on February 27, 1954. Under Section 331 in relation to Section 46(b) of the Tax Code, both of which provide that:

"Sec. 331. Period of limitation upon assessment and collection. - Except as provided in the succeeding section, internal revenue taxes shall be assessed within five

> years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."
>
> "Sec. 46(b). When to file. - The return shall be rendered on or before the first day of March of each year for the preceding calendar year, or if the corporation has designated a fiscal year, then within sixty days after the close of such fiscal year."

respondent had five years from March 1, 1954 within which to assess the income tax corresponding to the year 1953.

It is insisted by petitioner that the five year period should be computed in accordance with the provision of Article 13 of the New Civil Code, under which five years consist of 1,825 days or 365 days per year. Accordingly, the five years within which the deficiency assessment should have been made or issued ended on February 28, 1959. And inasmuch as the deficiency in question was assessed on March 2, 1959, it is advocated that the right of respondent to assess the same is already barred by statutory prescription.

We agree with petitioner that the counting of the five years should be done in accordance with Section 13 of the New Civil Code for the reason that the Tax Code fails to provide the mode of computing said period (see Article 18 of the New Civil Code).

However, we do not agree with petitioner that the assessment in question was issued beyond the 5-year statutory limitation. February 28, 1959 fell on a Saturday. Pursuant to Republic Act No. 1880, as implemented by Executive Order No. 25, effective July 1, 1957, all bureaus and offices of the government, except schools, courts, hospitals and health clinics, hold office only five days a week or from Monday to Friday. Saturday and Sunday are constituted public holidays or days of exemption from labor or work as far as government offices, including that of respondent Commissioner, are concerned. The offices and bureaus concerned are officially closed on those days. So that on February 28, 1959 and March 1, 1959, which were Saturday and Sunday, respectively, the office of respondent was officially closed. And where the last day for doing an act required by law falls on a holiday, the act may be done on the next succeeding business day. (Section 31, Revised Administrative Code.) Similarly, in computing any period of time prescribed by statute, the day of the act after which the designated period of time begins to run is not to be included. But the last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday (Section 1, Rule 28, Rules of Court). Consequently, since February 28, 1959 was a Saturday and the next day, March 1, 1959, a Sunday, respondent had until the next succeeding business day, March 2, 1959, Monday, within which to issue the deficiency assessment. The assessment in question having been issued on March 2, 1959, it was, therefore, seasonably made.

We come now to the question regarding petitioner's deduction claims of ₱8,265.82 and ₱10,387.50. We shall first consider the so-called "development expenses".

Petitioner avers incurring expenses amounting to ₱13,265.82 in 1953, for the purpose of acquiring information or data needed for its import business (t.s.n. p. 16), in securing licenses for the procurement of machineries intended for its tax-exempt industry, and in entertaining business associates, friends and foreign visitors (see Memorandum for Petitioner, CTA rec. p. 100; t.s.n. pp. 41, 44 & 45). Out of said sum, only the amount of ₱8,265.82 was claimed in 1953 as deductible from gross income (t.s.n. p. 18), leaving a balance of ₱5,000.00 which was claimed a deduction in 1954 (t.s.n. p. 19; Exh. A-7, BIR rec. p. 41). The deduction claim of ₱8,265.82 was disallowed by respondent on the ground that the same is "a capital expenditure which cannot be allowed as an item of business deduction" (Exh. 8, BIR rec. pp. 129-130).

Section 30(a)(1) of the Tax Code allows ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business to be de-

119

ducted from gross income. To be allowable, such kind of expense must be (1) incurred in carrying on any trade or business, (2) ordinary and necessary, and (3) paid or incurred within the taxable year (Collector of Internal Revenue vs. Philippine Education Co., Inc., G.R. No. L-8505, May 30, 1956).

There is no question that the expense sought to be deducted was incurred during the taxable year (1953) in carrying on the business of petitioner. This leaves us to the determination of whether or not the same was ordinary and necessary.

An expense will ordinarily be considered necessary if it is appropriate and helpful in developing and maintaining the taxpayer's business. An expenditure may be ordinary in the sense that it is not unusual in the experience of the group or community of which the taxpayer is a part (Mertens, Law of Federal Income Taxation (Revised Edition) Vol. 4, Sec. 25.09). With these jurisprudential considerations in mind, we hold that the "development expense" of ₱8,265.82 is a necessary and ordinary expense. In these times when business competition is acute, it is necessary and ordinary for a corporation to entertain the agents or representatives of its suppliers. Undoubtedly, entertaining business representatives is a great help in bringing more business to a corporation. Likewise, the normality and necessity of gathering data and information pertinent to taxpayers business cannot be disputed. The management of a corporation must possess such information as to what goods are available for import and what goods are in demand in the market, etc. To gather these data and information entails some expense.

We, therefore, hold that petitioner's expense amounting to ₱8,265.82 is a necessary and ordinary expenditure, incurred during the taxable year 1953 in carrying on petitioner's business. Hence, it is deductible from its gross income pursuant to Section 30(a) (1) of the Tax Code.

We come now to the issue of whether the sum of ₱10,387.50 representing bad debts written off in 1953 is deductible.

Section 30(e)(1) of the Tax Code allows as deduction from gross income debts due the taxpayer which are actually ascertained to be worthless and charged off within the taxable year. Under this provision, petitioner claimed in its return for 1953 a bad debt deduction in the amount of ₱10,387.50. This claim was disallowed by respondent on the ground that petitioner has not shown any proof that efforts to collect said debts have been exerted nor has it demonstrated with a reasonable degree of certainty the uncollectibility of the debts.

In the hearing of this case, petitioner presented two witnesses, namely, Ignacio Aguiluz, the collector for the corporation-petitioner herein, and Redentor Melo, chief of the legal department of Fernandez Hermanos Enterprises. Aguiluz testified that, as collector of petitioner, he attempted to collect the debts in question from

1948 to 1953, but his efforts were futile. According to this witness these unpaid accounts were referred to the legal department for collection, however, he made attempts to collect the same.

Witness Melo testified that the unpaid accounts were indorsed to him for collection; that the statement of accounts and several demands or collection letters were sent to the debtors concerned; that no judicial action could be brought against said debtors because the original invoices evidencing the indebtedness and necessary to prosecute the collection cases were destroyed during the fire which razed petitioner's establishment; that collection in court being futile, he recommended to petitioner's general manager and to Mr. Carlos Fernandez to write off the accounts; and that in view of his recommendation, the Board of Directors of petitioner adopted a resolution (Exhibit D) authorizing the charging off of the accounts in question.

The futile attempts to collect extrajudicially the debts in question and the destruction during a conflagration of the original invoices evidencing the indebtedness justify an ascertainment of the debts' worthlessness. We believe that petitioner has exerted diligent efforts to collect the debts. Under these circumstances it was not necessary for petitioner to investigate for the purpose of determining the solvency of the debtors. The fact that petitioner did not institute a judicial action against any of the debtors does not militate against the good faith of petitioner nor attribute to petitioner negligence in enforcing collection, for in determining the worthlessness of a debt previous court action is not necessary (S. C. Shangkuan vs. Collector of Internal Revenue, C.T.A. Case No. 19, March 23, 1955; William Purvin, 6 TC 21; Valentine E. Macy, TC Memo. Op. Dkt. 15747 [1949]). It is enough that the taxpayer exerted diligent efforts to enforce collection (Armstrong Cork Co., 1 BTA Memo. Op., Dkt. 104885 [1941]; Elias Fellabaum, TC Memo. 1955-98) and exhausted all reasonable means of collecting the debt (A Finkenberg's Sons, Inc., 17 TC 973 [1951]; Nathan H. Gordon Corp., 2 TC 571 [1943]). Petitioner is not required to be an "incorrigible optimist" (see White Dental Mfg. Co. vs. US, 274 U.S. 398, 71 L. ed. 1120) in enforcing collection of a debt.

Petitioner having demonstrated diligent efforts in enforcing collection of the debts in question and having exhausted reasonable means in collecting the same, we are of the opinion that said debts are deductible from its gross income for 1953.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent Commissioner of Internal Revenue requiring petitioner Western Pacific Corporation to pay the amount of ₱3,731.00 as deficiency income tax for 1953 is, as it is hereby, reversed, without special pronouncement as to costs.

SO ORDERED.

Manila, May 22, 1961.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO
is on leave.

124