REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Manila

June 18, 1962

VICENTE G. SINCO,
Petitioner,

- versus - C.T.A. CASE No. 224

THE 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 Collector (now Commissioner) of Internal Revenue demanding of petitioner, Vicente G. Sinco, the payment of the amount of ₱5,989.95 representing deficiency income tax for the calendar year 1949, plus 5% surcharge, interest at the rate of 1% per month and ₱40.00 as penalty for late payment of the tax.

Petitioner owns the controlling interests in the Community Publishers, Inc., a family corporation, and the Foundation College. On February 20, 1950 (Exhibit A-1, CTA rec. p. 156), he filed his income tax return for 1949, declaring therein a net income of ₱9,560.59 on which he paid a tax in the sum of ₱230.45 (see Exhibit B, CTA rec. p. 158).

After audit, examination and verification of petitioner's income tax return, together with his books of accounts and pertinent papers, respondent determined a tax deficiency of ₱5,989.95. This tax deficiency assessment, which resulted from the disallowance of depreciation and the inclusion of alleged undeclared income, is computed as follows:

Net income per return	₱9,560.59
Add:	
Disallowed depreciation:	
House at Novaliches, Caloocan ...	800.00
Residence at Sta.Ana,Manila	900.00
Undeclared income:	
Royalties	580.00
Rental,one LTE offset press	7,200.00
Net profit on sale of books sold by Community Publishers, Inc. ...	8,693.45
Addition to plant building(construction made by Community Publishers, Inc.)	2,901.07
Salary of petitioner's wife from Community Publishers, Inc.	480.00
Promotional expenses of petitioner's wife	3,600.00
Salary of wife from Foundation College	2,400.00
Net income from Foundation College	2,924.89
Net income per investigation ...	₱40,040.00
Less: Personal exemption	4,500.00
Net income subject to tax	₱35,540.00
Tax due thereon	₱ 6,220.40
Less: Amount already assessed ..	230.45
Deficiency income tax due	₱ 5,989.95

Petitioner protested the assessment. His protest having been denied, he filed the instant appeal. In his petition for review, he raised the issue of prescription of the right of the Commissioner of Internal Revenue to collect the deficiency income tax in question. This Court, in a resolution dated July 7, 1958, resolved the issue against petitioner.

The issues to be resolved in this case are:

1. Whether or not petitioner may properly claim a deduction for the depreciation of his houses in Novaliches, Caloocan and Sta. Ana, Manila;

2. Whether or not the uncollected royalties, rental of LTE offset press and profit on the sale of books in the respective sums of ₱580.00, ₱7,200.00 and ₱8,693.45 due petitioner from the Community Publishers, Inc. should be considered as constructively received by him in 1949;

3. Whether or not the cost of an additional construction made by the Community Publishers, Inc. in the building belonging to petitioner should be treated as income to him;

4. Whether or not petitioner failed to declare salaries received by his wife from the Community Publishers, Inc. and the Foundation College;

5. Whether or not amounts received by petitioner's wife from the Community Publishers, Inc. allegedly representing reimbursement of promotional expenses should be considered as salary income to the wife; and

6. Whether or not profits realized by the Foundation College should be reported as petitioner's income.

The issues will be discussed and disposed of in seriatim.

1. Depreciation:

Respondent disallowed petitioner's claim for depreciation deduction on the latter's house in Novaliches, Caloocan, on the ground that the house was not used in business. Likewise, the depreciation deduction claimed on the house in Sta. Ana, Manila, was disallowed because it was used by petitioner as his residence.

The Novaliches house was actually rented to the Armed Forces of the Philippines, but no rentals were ever paid due to lack of funds. Petitioner never used the said property as his residence. He had no intention of converting the property for personal use. Since the property was never occupied by petitioner as a residence but, on the contrary, was rented to the Armed Forces of the Philippines, the said property was used in trade or business. The mere fact that petitioner received no rental due to the inability of the lessee to pay would not change the nature of the use of said property. The deduction for depreciation should consequently be allowed in pursuance of the provisions of paragraph (f), section 30 of the Tax Code.

As respects the house in Sta. Ana, the facts show that a portion of it was used by petitioner as his residence and a portion was rented by the Community Publishers, Inc. to house its stockroom, bindery and printing department. Said house was used both for personal and business purposes. Where a property is devoted to personal and at the same time to business uses, there must be an apportionment so that depreciation will be limited to the proportion of business to total use (see Jamir vs. Collector of Internal Revenue, CTA Case No. 443, Nov. 28, 1959 aff'd in G. R. No. L-16552, March 30, 1962; Sec. 23.11a, Vol. 4, Law on Federal Income Taxation, Mertens, citing Robert H. Montgomery, 37 BTA 232; Greenberg vs. Riddell, 59-2 USTC, par. 9555 (D.C.S.D. Cal., 1959). Considering that the rented portion was used by the corporation as its stockroom, bindery and printing department, one half of the claim for depreciation should be allowed.

2. Royalties, Rental of press, Profits on books:

The amounts of ₱580.00, ₱7,200.00 and ₱8,693.45 representing royalties, rental of one LTE offset press and profits from the sale of petitioner's books, respectively, were due petitioner from the Community Publishers, Inc., but which he did not actually receive in 1949 because the corporation requested him not to collect the same. Petitioner now contends that said amounts should not be treated as income for 1949 as they were actually received by him in 1952. In this connection, it must be stated that petitioner reported his income on the basis of actual receipts and payments.

The income which is subject to a man's unfettered command and which he is free to enjoy at his own option is taxed to him as his income whether he sees fit to enjoy it or not (Corliss vs. Bowers, 281 US 376, 74 L ed 916, 918). He may not deliberately turn his back on income and thus select the year in which he will report it (Hamilton Nat. Bank of Chattanooga, 29 BTA 63, 67). But, when a taxpayer reports his income on the basis of actual receipts and payments, he has the power to determine the time when items become income. Such a power produces a telling advantage to him because of the shifting scale of tax rates, the varying treatment of capital gains and losses, and the possible bar of the statute of limitations. And it was to enable the Commissioner to circumvent the avoidance and possible evasion of tax that the theory of actual receipt was implemented with the doctrine of constructive receipt as a test of remuneration (Richard V. Hyland, TC Memo. Op., Dkt. 12543 (April 21, 1948).

While it has been established that the amounts in question accrued in 1949 in favor of petitioner, there is no showing that they were credited to or set apart for him. However, we are inclined to believe that they were unqualifiedly subject to his demand or disposition. In the first place, the corporation had sufficient funds with which to pay the accounts in question. In the second place, petitioner, being the owner of the controlling interest in the corporation, could have ordered the payment if he wanted to. The mere fact that the corporation allegedly requested him not to collect the amount would not place the same beyond his reach for he was the very person in whom was reposed the decision to pay or not to pay. Consequently, the amount of ₱16,473.45 should properly be treated as income constructively received and returnable in 1949.

3. Additional construction:

On the ground that petitioner owns the building rented by the Community Publishers, Inc., respondent treated as income of petitioner the cost (₱2,901.07) of an additional construction thereto undertaken and paid for by the latter in order to shelter its new machinery. Petitioner, however, maintains that he realized no income in the additional construction since whatever was built by the corporation belonged to it and not to him.

The cost of the additional construction should not be treated as income of petitioner. As alleged by petitioner and uncontradicted by respondent, the additional construction in question was for the use and account of the corporation. It belonged to the corporation. Such being the case, it would be improper and inequitable to treat the cost of the construction as income of petitioner. To do so would be tantamount to taxing petitioner for an unearned income.

4. Salary of petitioner's wife from the Community Publishers, Inc. and Foundation College:

Respondent contends that petitioner did not declare the salaries received by his wife from the Community Publishers, Inc. and the Foundation College in the respective amounts of ₱480.00 and ₱2,400.00. On the other hand, petitioner maintains that these amounts were reported under schedule A of his income tax return for 1949 as salaries. An examination of petitioner's income tax return (Exhibit "A") discloses that he declared the amount of ₱7,200.00 as salary received from the corporation and the college. But there is no indication therein as to whether or not the sum declared was received by him and by his wife. From the return alone we have no way of knowing and making a definite finding as to whether or not his wife's salaries were actually reported therein. He presented no other evidence on the point.

The assessment of respondent is presumed prima facie correct and the burden of proving the incorrectness or illegality of the assessment lies on the taxpayer (Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, G.R. No. L-6741, January 31, 1956). Petitioner failed to show error in respondent's finding with respect to the items in question. Hence, respondent's determination is sustained.

5. Promotional expense of wife, ₱3,600.00:

Respondent urges upon us that, since petitioner's wife never participated in the promotion of the business of the Community Publishers, Inc., payments regularly made to her as reimbursement for business promotion expense in the amount of ₱150.00 every middle and end of the month or ₱3,600.00 yearly should be considered as salary income. As the Community Publishers, Inc. was (in 1949) a family corporation, from which petitioner's wife received a salary for services rendered in 1949 in the amount of ₱480.00, we do not find it illogical to conclude that she participated in the business promotion of the family corporation for the expenses of which she was reimbursed in the said year in the amount of ₱3,600.00. But the fact that payment was made to petitioner's wife regularly at ₱150.00 every fifteen days constrains the conclusion that the reimbursements were not for advances made by Mrs. Sinco to the corporation. Rather, we conclude that these so-called reimbursements were allowances to her which properly should have been returned in 1949 (see Dave S. Joseph, 1 TCM 105 Dec. 12,892-F; M. L. Cottingham, 15 TCM 987, Dec. 21, 885(M).

6. Profits from Foundation
   College:

Finally, respondent treated the profits in the sum of ₱2,924.89 realized by the Foundation College as income of petitioner. But, petitioner assails this treatment on the ground that the college has not declared any dividend nor distributed profits to its members. He also alleges that the college is a non-stock and non-profit corporation devoted exclusively to educational purposes and is exempt from the payment of income tax under section 27(e) of the Tax Code.

We cannot sustain the determination of respondent. It is not disputed that said profits in the sum of ₱2,924.89 were not distributed among the owners of the college. Petitioner never received nor was credited with the amount. The mere fact that petitioner owns the controlling interest in the college does not subrogate him in the college's place as to make the earnings of the college his own income. The college, being a corporation, has a personality of its own, distinct and separate from that of petitioner.

With respect to the compromise penalty imposed by respondent in the amount of ₱40.00, it has been held time and again that the Commissioner of Internal Revenue has no authority to impose and demand payment of this penalty in the absence of an agreement thereon.

In resumé, the income tax liability of petitioner for the calendar year 1949 should be as hereunder set forth:

Amount of income per return ---	₱ 9,560.59
Add:	
Disallowed depreciation:	
House at Sta. Ana, Manila --	450.00
Undeclared income:	
Royalties ------------------	580.00
Rental, one LTE offset press	7,200.00
Net profit on sale of books sold by Community Publishers, Inc. ---------	8,693.45
Salary of wife from Community Publishers, Inc. -----	480.00
Salary of wife from Foundation College ------------	2,400.00
Allowance to wife from Community Publishers, Inc. --	3,600.00
Net income ----------------	₱32,964.04
Less: Personal exemption ---	4,500.00
Net income subject to tax --	₱28,464.04
Tax due thereon ------------	₱ 4,442.08
Less: Amount already assessed ----------------	230.45
Deficiency tax due ---------	₱ 4,211.63

WHEREFORE, the decision appealed from is hereby modified. Petitioner, Vicente G. Sinco, is hereby ordered to pay to the Collector (now Commissioner) of Internal Revenue or his authorized representative the amount of ₱4,211.63 as deficiency income tax for 1949 within 30 days from the date this decision becomes final. If the said amount is not paid within said period, there shall be added to the unpaid amount the surcharge of 5%, plus interest at the rate of 1% per month to be computed in accordance with Section 51 of the National Internal Revenue Code as amended by Republic Act No. 2343. With costs against petitioner.

SO ORDERED.

Manila, June 18, 1962.

MARIANO HABLE
Presiding Judge

I CONCUR:

[illegible]
Associate Judge

CONCURRING AND DISSENTING OPINION

I concur in the foregoing opinion. However, I maintain my previous dissenting opinion on the question of the jurisdiction of this Court to entertain the herein appeal of petitioner.

ROMAN M. UMALI
Associate Judge