Lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

S.P.S. GAMALIEL P. MAGSAYSAY
and CARMEN P. GRANADA,
Petitioners,

- versus - C.T.A. CASE NO. 4090

COMMISSIONER OF INTERNAL
REVENUE,
Respondent. 3/24/93

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

D E C I S I O N

This case involves the decision of respondent Commissioner of Internal Revenue assessing petitioners of deficiency income tax in the amount of P31,335.92 for the taxable year 1978.

Petitioners' Gamaliel P. Magsaysay and Carmen Granada, husband and wife, and residing at #2053 Ipil St., Sta. Cruz, Manila, during the taxable year in question were engaged in the practice of their respective profession as lawyer and dentist.

On April 30, 1979, petitioners filed their joint income tax return for the taxable year 1978 declaring the following items, to wit:

Gross (joint) income		P111,064.00
Total deduction		80,839.00
Net income		P 30,225.00
Personal exemption	P9,000.00	
Standard deduction for working wife	500.00	9,500.00
Taxable income		P 20,725.00
Tax due		P 3,075.00

(Exhibit "A", p. 4, CTA records)

However, upon examination conducted by Miss Celia Capuchino, Revenue Examiner, several deductions in the income tax return of petitioners were disallowed, as follows:

Item	Amount
Overstatement of expenses	P 277.15
Furniture to be capitalized	10,485.40
Tuition fees-excessive	485.00
Transportation	23,000.00
Representation	4,000.00
Depreciation	10,200.00
Contribution	2,886.00

On April 15, 1982 respondent issued deficiency income tax assessment of P31,335.92 under Demand Letter No. 23-5-04A-046777-78 (Exhibit "B", petitioners, p. 8, CTA records).

In a letter dated July 2, 1982 addressed to respondent thru the Director, Revenue Region No. 4-A, petitioners took exception to each of the alleged discrepancies requesting that the deduction be allowed and the said deficiency assessment be set aside (Exhibit "C", petitioners, p. 9, CTA records). Respondent in a follow-up letter dated April 15, 1983 demanded from petitioners the payment of P31,335.92 including interest (Exhibit "D", petitioners, p. 11, CTA records).

On August 3, 1983, petitioners protested the aforesaid assessment which was denied by respondent on June 27, 1986 (Exhibit "E", petitioners, p. 12, CTA records). Hence, this present petition for review filed on August 15, 1982, seeking the reversal of respondent's decision denying petitioners' request to set aside the assessment.

This case at hand has been submitted for decision based on the pleadings and records of the case with respondent submitting his memorandum sans the memoranda of petitioners.

The issues raised in the case at bar are as follows:

1. whether or not petitioners are liable to the deficiency income tax of P31,335.92 for the taxable year 1978; and

2. whether or not the right of respondent to assess has already prescribed.

Anent the first issue, it is well settled that when a taxpayer claims deduction he must be able to point some specific provision of the statute in which the deduction is allowed and must be able to prove that he is entitled to the deduction which the law allows. On this premise, we are discussing the controversial items as indicated in respondent's assessment.

1. Overstatement of expenses.

Respondent in a letter dated June 27, 1986 claimed that petitioners overstated their expenses by P277.15, computed as follows:

Per income statement of petitioner	P80,839.00
Footing by the BIR examiner	80,561.85
Overstatement claimed by BIR	P 277.15

We do not agree with respondent. What happened in this case was that when respondent recomputed the amounts of expenses in petitioners' income tax returns it inadvertently failed to include certain item of expenses like the medical care expenses in the amount of P276.80. That explains why respondent concluded that petitioners overstated their expenses. Based on this Court's analysis, it appears that the actual overstatement of expenses by petitioners show a difference of only P0.35 and not P277.15 as claimed by respondent as demonstrated below:

Items	Amount
Salaries and Wages	P 6,000.00
Transportation	23,000.00
Representation	5,000.00
Repairs	2,951.35
Taxes and Licenses	1,294.00
Depreciation	13,200.00
Contribution	5,000.00
Basic Tuition Fees	1,235.00
Medical Care	276.80
Office Supplies	3,113.40
Dental Supplies	1,073.30
Furniture and Equipment	13,103.00
Laboratory Expenses	1,289.00
Books and Magazines	1,433.80
Electricity, Water, etc.	1,230.00
Postage	1,639.00
Footing by the Court	P80,838.65
Footing by petitioners	80,839.00
Actual Overstatement	P .35

2. Furniture and Equipment.

Petitioners maintained that the amount of P13,103.00 should be deducted as depreciation expense for the following furniture and equipment:

Name of Store	Date of Purchase	Amount
New Luzon Bed and Furniture	05/08/78	P 100.00
Libiran Home Furnishing	12/21/78	400.00
Phil. Bed Factory	12/23/78	345.00
Avesco Mktg. Corporation	06/16/78	378.00
Atlas General Equipment	12/23/78	550.00
Asian Rattan Inc.	12/22/78	2,200.00
IBM	12/20/78	9,130.00
Total- Furniture & Equipment		P13,103.00

Petitioners claimed deduction for depreciation of the furniture and equipment must be viewed in the light of the following condition set forth in Sec. 30(f) of the Tax Code and jurisprudence on the matter: (1) it must be reasonable (see Bacolod Milling Co., Inc. v. Commissioner, CTA Case No. 1402, Oct. 31, 1969); (2) for property arising out of its use or employment in the business or trade, or out of it not being used temporarily during the year (Connel Bros. Co. [Phil] v. Coll., CTA Cases Nos. 411 and 610, April 30, 1966); (3) it must be charged off during that taxable year; and (4) a statement on the allowance must be attached to the return. A mere claim of a taxpayer that depreciation allowance is deductible without the required evidence is unavailing with the BIR or with the Court.

Petitioners in their joint return merely stated in the petition, that as practicing professionals the furniture and equipment are subject to depreciation allowance. Such bare statement will not hold true in the light of the Supreme Court ruling in the case of *Consolidated Mines, Inc. vs. The Court of Tax Appeals*, (58 SCRA 618, Nos. L-18853 C18854, August 29, 1974) wherein it was ruled that the burden of proof is on the taxpayers to show justification for depreciation. Petitioners' failure to discharge the burden prevent the Court from disturbing the Commissioner's computation. We agree with respondent that the acquisition cost of the furniture and equipment of P13,103.00 is to be spread into five year period, which is the estimated life of the said items, that the actual life of the said properties is not short, but of a permanent character and the amount expended by petitioners are capital expenditure which may be recovered through depreciation. Hence, We are of the persuasion that the allowable amount of depreciation should be P2,620.60 or 1/5 of P13,105.00 the total cost of the furniture and equipment under the straight line method.

3. Basic Tuition Fees.

Coming now to the deductibility of the basic tuition fees in the amount of P1,235.00. It is a mandatory requirement under Sec. 30(a, 2, A, 2) of the Tax Code, that the deduction shall not exceed P250.00 for each taxpayer dependents who are studying in high school but not to exceed in the aggregate of P1,000.00.

The law is very simple and explicit and do not require further elaboration, as correctly stated by respondent in his memorandum (p. 4, CTA records p. 99). Petitioners' claim of P1,255.00 for basic tuition fees of his (3) high school children was excessive. Under the law, the allowable deduction is only P750.00 or P250.00 each. Therefore, there is an overclaimed amount of P485.00 (1,255.00 less P750.00).

4. <u>Transportation and travelling expenses.</u>

For the taxable year 1978 petitioners are claiming the amount of P23,000.00 for transportation and travelling expenses, but respondent disallowed the whole amount claimed contending that petitioners failed to submit supporting papers or satisfactory explanation. Under Section 30(a) of the Tax Code. Respondent further argued that petitioners failed to prove that they were incurred in the year in question, and, likewise failed to submit proof that the said expenses were actually incurred in connection with the exercise of their respective professions and incurred while away from home. We agree with respondent. As held in the case of *Wilfredo L. Carisosa vs. Bureau of Internal Revenue and, Cesar M. Valdez, in his capacity as BIR Regional Director, Revenue Regional Office No. 7, Cebu City*, CTA Case No. 3713 January 25, 1985, "It is hardly necessary to add that the burden of proof is on the taxpayer contesting the validity or correctness of assessment to prove not only that the

Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. (*Lino Gutierrez vs. Collector of Internal Revenue*, CTA Case No. 504, January 28, 1982) Petitioner failed to present evidence as proof in support of his allegations in his petition for review. Hence, presumed is correctness of the tax assessment (Interprovincial Auto-bus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Transportation, Co., L-13049 and L-13462, April 29, 1960, 107 Phil. 965), The Court can only consider the claim for deduction where evidence has been offered therefor.

The record shows that petitioners were able to substantiate the amount of P656.75 with corresponding bus tickets and car rental receipts, showing the date of purchase and was able to prove that they were incurred in the pursuit of their profession and in the year in question (Exhibits J, K, L, M, and N, pp. 122-125, CTA records). Petitioners are thus granted the said sum of P656.75 for their travelling and transportation expenses.

5. Representation.

We agree with respondent that only the amount of P1,000.00 is allowable as representation expenses. This amount appeared to be supported with receipts issued to petitioners (Exhs. M, N, O, P, Q, and R, pp. 125-130, CTA Records). But the amount of P4,000.00 is denied for lack of supporting documents. xxx. (Collector of Internal Revenue vs. Goodrich International Rubber Co., No. L-22265).

6. Depreciation.

We agree with the ruling of respondent that cooking range and television set are not subject to depreciation allowance since said items are for the personal use of petitioners and are not in any way connected with the exercise of their profession pursuant to Sec. 30(f) of the Tax Code

We now consider the statutory test of deductibility of depreciation for the house. As claimed by petitioners that portion of the house was used for office and as their residence. Depreciation is not measured by theoretical yardstick but should be determined by a consideration of actual fact (Limpan Investment Corporation vs. Commissioner, L-21570, July 20, 1966, 17 SCRA 703; Commissioner vs. Precilla Estate Inc., L-18282, May 29, 1986). The records show that petitioners do not maintain any office aside from their residence located at 2053 Ipil St., Sta. Cruz, Manila, and this has been admitted by respondent in his answer.

We thus agree with the contention of petitioners that the portion of the house devoted for office use is subject to depreciation allowance (*Abra Valley College Inc. vs. Aquino*, L-390586, June 16, 1980, 162 SCRA 106) Thus, if only a part of the property (real or personal) is used for business purposes or if the entire property (real or personal) is used only partially for business purposes, there must be an apportionment so that depreciation will be limited to the proportion used to total use (Mertens Law of Federal Income Taxation, Vol. 4, 2311a, Chap. 25, p. 66). If a part of the house is used as office, the corresponding rent or depreciation as the case may, be is deductible (C.B. 1938-183, Law of Federal Income Taxation, Mertens, Vol. 4, p. 523). It is to be noted however, that petitioners failed to state categorically what portion of the house is devoted for office use. Be that as it may, petitioners are presumed to have claimed depreciation for the whole house which is P35,000.00. As the records will show petitioners merely indicated the amount of P35,000.00 in schedule 10 of their income tax return (p. 6, CTA records) without specifying what portion relate to the office space and for the house. At any rate, We are of the impression that said amount refers to the cost of the whole house. Based on the law and jurisprudence on the matter, one half portion of the house used for office space can be depreciated. Since one half (1/2) of the amount of P35,000.00 is P17,500.00 which We assume to represent the cost of the office space, and since petitioners were already granted in the previous year the amount of

P19,200.00 as deductible office depreciation, petitioners are now barred in claiming further deduction for depreciation of the same office space for the taxable year 1978. The law allows a deduction from gross income of depreciation but limits recovery to the capital invested in the assets being depreciated. xxx it does not authorize depreciation beyond the acquisition cost. The reason is that deduction is a privilege, not a matter of right. Deduction are not created by implication but on a clear expression of law. xxx (Basilan Estate Inc. vs. Commissioner, 21 SCRA 17, September 5, 1967; Gutierrez vs. Commissioner, L-19987, May 20,1965).

Depreciation deduction for books and magazines in the sum of P1,000.00 was allowed by respondent together with the amount of P2,000.00 for furniture and equipments.

7. <u>Contribution.</u>

Regarding the amount of P5,000.00 which petitioners claimed as contribution expenses, except for the bare statement of petitioners as to the weekly church limosna of his wife, no evidence was submitted to support such allegation. Contrary to what is provided in Section 30(h) of the Tax Code which allows full deductions of the contribution if such was made in favor of the institutions or organizations specified thereto. Contributions other than those mentioned in Sec. 30(h) of the Tax Code are not deductible Respondent is correct in treating the amount of P5,000.00 as excessive. And assessing deduction of P2,113.50 as allowable contribution expense of petitioners.

In fine, petitioners deficiency income tax liability for the year 1978 should be recomputed as follows:

Findings		Amount to be Disallowed
1. Overstatement of expenses due to error in addition:		
Per income tax return	P80,939.00	
Per Court Footing	80,938.65	P .35
2. Furniture and Equipment to be capitalized:		
Acquisition cost	P13,103.00	
Less: Depreciation (13,103 / 5)	2,260.60	10,842.40

3. Basic Tuition Fees of three (3) high school children:

Claimed by petitioners	P 1,235.00	
Allowed by the law (750 X 3)	750.00	485.00

4. Transportation:

Claimed by petitioners	P23,000.00	
Substantiated with receipts	656.75	22,343.25

5. Representation:

Claimed by petitioners	P5,000.00	
Allowed by BIR examiner	1,000.00	4,000.00

6. Depreciation:

Claimed by petitioners	P13,200.00	
Allowed by BIR examiner	3,000.00	10,200.00

7. Contribution:

Claimed by petitioners	P5,000.00	
Allowed by BIR examiner	2,113.50	2,886.50
Total amount to be disallowed as deductible expenses		P50,757.50

COMPUTATION OF DEFICIENCY INCOME TAX:

Net income per return		P29,725.00
Add total disallowance on expenses claimed deductible		50,757.50
Net income per investigation		P80,482.50
Less personal exemptions		9,000.00
Net taxable income		P71,482.50
Tax Due:		
on first P70,000.00	P23,280.00	
excess of P1,482.50 at the rate of 52%	770.90	P24,050.90
Less tax due per return		3,075.00
Deficiency income tax		P20,975.90
Add interest - max. (P20,975.90 x 15% x 3 years)		9,439.15
TOTAL		P30,415.05

The Court now comes to the second issue on whether respondent's right to assess petitioners for deficiency income tax and collect the same has already prescribed.

This issue has been answered on four square in the case of *Wood Works, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 4472, April 17, 1992. The pertinent portion of that decision is quoted below:

> "The Tax Code, prior to its amendment by Batas Pambansa No. 700, entitled "An Act Amending Sections 318 And 319 Of The National Internal Revenue Code, As Amended, So As To Reduce The Period Of Limitation For Assessment Of Internal Revenue Taxes From Five To Three (3) Years" (dated April 5, 1984), provided in its Sections 318 and 319, respectively, that:
>
> > 'Sec. 318. Period of limitation upon assessment and collection of taxes -- Except as provided in the succeeding section, internal revenue tax 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.'

"and;

'Sec. 319. Exceptions as to period of limitation of assessment and collection of taxes. --

'xxx xxx xxx

'(c) When 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 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 Commissioner and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.'

"Subsequent to BP 700, the same Tax Code provisions, this time renumbered to Sections 268 and 269, read, as follows:

'Section 268. Period of limitation upon assessment and collection. -- Except as provided in the succeeding section, <u>internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return</u>, and no proceeding in court without assessment for the collection of such taxes shall be begun of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purpose 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. (Underscoring Ours)'

"and;

'Section 269. Exceptions as to period of limitation of assessment and collection of taxes. --

'xxx xxx xxx

'(c) Any internal assessment revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax. (Underscoring supplied)'

"In the case at bar, the income tax return in question was filed by petitioner on April 16, 1984, while the assessment was issued by respondent four years and eight months later, on January 16, 1989. Thus, the Court must determine whether the provisions of the Tax Code prior to or those subsequent to BP 700 are applicable to the case at bar. For, if the latter provisions apply, then respondent's right to collect the assessed amount (and, in fact, its right to make the assessment against the petitioner, in the first instance) as already prescribed.

"Section 3 of B.P. 700 provides the Court with the solution. It states as follows:

> 'Sec. 3. The period of limitation herein prescribed shall apply to assessments of internal revenue taxes beginning taxable year 1984. (Underscoring supplied)'

"Clearly, since the income taxes which are the subject of the assessment notice, demand letter, and the warrants of distraint or levy, are petitioner's corporate taxes for the year 1983, then B.P. 700 and the amendments it introduced to the Tax Code do not apply. In other words, the provisions of Sections 318 and 319 above-quoted apply to the instant case; and, consequently, respondent's right to collect the assessed amount has not yet prescribed.

In view of the foregoing, this Court is convinced that the assessment made against petitioner for deficiency income tax return for 1978 in the total amount of P30,415.05 has not yet prescribed, petitioners income tax return having been filed on April 30, 1979 and the assessment having been issued on April 15, 1982.

ACCORDINGLY, spouses Gamaliel P. Magsaysay and Carmen P. Granada, petitioners in this case, are hereby ordered to pay the amount of P30,415.05 to respondent Commissioner of Internal Revenue as deficiency income tax inclusive of interest which accrued thereon incident to delinquency pursuant to Section 51(e) of the National Internal Revenue Code of 1977.

SO ORDERED.

Quezon City, Metro Manila, March 24, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals