FRANCISCO MA. GONSALVES,
Petitioner,

- versus - C.T.A. CASE NO. 238

June 29, 1957

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

This is an action for the refund of the amounts of ₱405.38, ₱331.00, and ₱432.00, or a total sum of ₱1,168.38, which were allegedly paid as excess deficiency income taxes for the years 1949, 1951 and 1952 respectively.

Petitioner Francisco Ma. Gonsalves is a Portuguese citizen, single and resident of the City of Manila. In 1949, he was the Marine Manager, and subsequently, the Vice-President of the American International Underwriters of the Philippines, Inc., (hereinafter called as AIUPI) a domestic corporation engaged in all lines of insurance business, except life insurance.

For the taxable years in question, the petitioner filed his income tax returns showing therein the following data:

1949

Net income	₱16,521.50
Deduct: Personal exemptions	1,000.00
Amount of income subject to tax.	₱15,521.50
Amount of tax due	₱ 1,818.66

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1951

Net income	₱18,425.79
Deduct: Personal exemptions	1,800.00
Amount of income subject to tax .	₱16,625.79
Amount of tax due	₱ 2,810.19
Less: Amount of tax withheld	1,460.40
Amount still due	₱ 1,349.79

1952

Net income	₱18,094.26
Deduct: Personal exemptions	1,800.00
Amount of income subject to tax .	₱16,294.26
Amount of tax due	₱ 2,730.62
Less: Amount of tax withheld	1,184.40
Amount still due	₱ 1,546.22

The petitioner paid the income taxes due and payable as per his income tax returns for the years 1949, 1951 and 1952. However, after investigation and verification, the respondent, in January, 1954, issued deficiency income tax assessments against the petitioner. The amounts demanded in the deficiency assessments were arrived at as follows:

1949

Net income per return	₱16,521.50
Add: Representation expense	1,800.00
Subsistence allowance from AIUPI	584.66
Net income per investigation	₱18,906.16
Less: Personal exemption	1,000.00
Amount of income subject to tax .	₱17,906.16
Amount of tax due	₱ 2,224.04
Less: Tax already assessed	1,818.66
Deficiency tax due	₱ 405.38

1951

Net income per return	₱18,425.79
Add: Subsistence allowance from AIUPI	3,178.91
Net income per investigation	₱21,604.70
Less: Personal exemption	1,800.00
Amount of income subject to tax .	₱19,804.70
Amount of tax due	₱ 3,573.00
Less: Tax already assessed	2,810.00
Deficiency tax due	₱ 763.00

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Net income per office audit	₱18,145.86
Add: Allowance for rent, telephone, electricity, etc.	3,232.05
Less: Contributions disallowed per office audit	(51.60)
Net income per investigation	₱21,326.31
Less: Personal exemption	1,800.00
Amount of income subject to tax .	₱19,526.31
Amount of tax due	₱ 3,506.00
Less: Amount of tax withheld ..₱1,184.40	
Amount of tax previously assessed ..₱1,558.60	₱ 2,743.00
Deficiency tax due	₱ 763.00

The petitioner, not being agreeable to the deficiency income tax assessments, requested for the re-investigation of his income tax liability, and accordingly, his case was referred to the Conference Staff of the Bureau of Internal Revenue. After due hearing, the Conference Staff found the deficiency assessments against the petitioner to be correct and recommended the reiteration of the same.

During the pendency of the case before the Conference Staff, and in order to avoid delinquency increments, the petitioner paid the sums of ₱405.38, ₱763.00, and ₱763.00 as deficiency income taxes corresponding to the years 1949, 1951 and 1952. The first amount was paid on February 27, 1954, and the last two sums, on February 15, 1954.

On February 11, 1956, the petitioner filed with the respondent his claim for refund of the amounts of ₱405.38, ₱331.00, and ₱432.00, or a total sum of ₱1,168.38, representing alleged excess payments of deficiency income taxes for the years 1949, 1951 and 1952, and on February 15, 1956, or on the last day of the two-year period prescribed in Section 306 of the National Internal Revenue Code, the petitioner filed the instant petition for refund.

Let us now proceed to consider and examine the deductions disallowed and the additions to petitioner's income which caused the issuance of the deficiency income tax assessments in controversy. For clarity and convenience, we shall discuss them by the taxable years:

FOR THE YEAR 1949:

Representation Allowance . . .₱1,800.00.- Of the amount of ₱1,800.00 claimed by the petitioner as a deduction from his gross income, only the sum of ₱450.00 was shown to have been received and spent by the petitioner as representation allowance. This sum was entered in the books of the company as such representation allowance and the respondent admits the nature of this amount. Hence, we are of the opinion and so hold that it should be allowed as a deduction. With regard to the rest of the ₱1,800.00, or the sum of ₱1,350.00, we rule that the same is not deductible from the gross income of the petitioner inasmuch as no sufficient evidence was presented to show that petitioner's employer - the AIUPI, disbursed the same to the taxpayer herein as representation and entertainment expense. The books of AIUPI does not show that the sum of ₱1,350.00 was given to the petitioner to be spent as representation expense (Sec. 34, Rule 123; & Sec. 69, (q) Rule 123, Rules of Court) and therefore, it should be disallowed as a deduction.

<u>Subsistence Allowance From AIUPI . . .₱584.66</u>.- This consists of two items, namely, the New York Hotel bills in the sum of ₱355.06 and the Manila Hotel bills in the amount of ₱229.60.

In the early part of 1949, the petitioner was sent abroad by his employer, the AIUPI, on an official and business trip. Part of the expenses he incurred was this amount of ₱355.06 representing bills for lodging and meals at the Barbizon Plaza Hotel in New York City. Inasmuch as the travel was for the pursuit of the business of petitioner's employer, the AIUPI paid the same directly to the New York Hotel. Certainly, the taxpayer herein did not personally profit or gain from the amount of ₱355.06 which was paid to the New York Hotel and the same should therefore not be added to and included as part of his gross income for the year 1949.

With regard to the Manila Hotel bills in the amount of ₱229.60, and as the petitioner correctly points out, this item represents living quarters and meals furnished by his employer and is of the same nature and character as the item for living quarters for the years 1951 and 1952. Hence, we shall pass upon the same together with the subsistence allowance for 1951 and 1952.

FOR THE YEARS 1951 AND 1952:

There is only one kind of item in dispute for the years 1951 and 1952, i.e., the allowance for living quarters granted the petitioner. During the years in question, the petitioner was furnished by his employer a dwelling house where he lived and entertained company customers and guests. The company paid for the rental of the house and all the expenses for the utilities therein, like the telephone, electricity, water, etc. The respondent considered this living quarters furnished by the AIUPI to the petitioner as additional compensation, and added the costs of the same to the gross income of petitioner. On the other hand, the petitioner claims that the rental and subsistence allowance was for the convenience and benefit of his employer, and that only the value to him of such living quarters in the amount of ₱1,800.00 a year should be considered taxable. In short, the issue in this regard, is whether or not the rental allowance furnished to the petitioner by his employer is taxable as part of his income.

We have just decided the same question in the case of Arthur Henderson vs. Collector of Internal Revenue, C.T.A. Case No. 237, June 26, 1957. The facts in the said case are almost identical with the facts in the case at bar, the only difference being that Arthur Henderson is the President of the AIUPI, while the taxpayer herein, Francisco Ma. Gonsalves is the Vice-President of the same company.

In the case of Arthur Henderson, this Court, in disposing of the same question which we have before us, held among others:

> "Based upon these judicial decisions and administrative regulations, and the factual evidence adduced during the hearing of this case, we find that the inherent nature of petitioner's employment as president of the American International Underwriters of the Philippines, Inc. does not require him to occupy the apartments supplied by his employer-corporation. While petitioner, as such president, had to entertain and in fact entertained officials, guests and customers of his employer, nevertheless, we do not see how his living in the supplied quarters could be an essential element of his employment. He could have entertained in hotels or other quarters rented out to the public without rendering improper and inefficient the performance of his presidential duty of entertaining. Moreover, entertaining his employer's officials, guests and customers is not the predominant occupation of petitioner as president. We believe that it is more for petitioner's convenience than his employer's to dwell in the furnished apartments. Consequently, the rental and subsistence allowances given to him as part of the compensation for his employment and as such constituted taxable income."

In the case under consideration, we find no strong and valid reason to deviate from our ruling in the Henderson case as stated above. Hence, we are of the opinion that the allowance for living quarters granted to the petitioner for the years 1951 and 1952, and the Manila Hotel bills paid in 1949, should be considered as additional compensation received by the petitioner, and included as part of his income for the years in question. In the absence of any evidence to the contrary, we find that the cost to the employer of maintaining petitioner's quarters is the ratable value thereof to petitioner and forms part of his taxable income.

In view of the foregoing considerations, the deficiency income tax assessment issued against the petitioner for the year 1949 is hereby modified as follows:

Net income per return	₱16,521.50
Add: Representation expense	1,350.00
Manila Hotel bills	229.60
Net income per investigation	₱18,101.10
Less: Personal exemption	1,000.00
Amount of income subject to tax .	₱17,101.10
Amount of tax due	₱ 2,087.19
Less: Tax already assessed	1,818.66
Deficiency tax due	₱ 268.53

Inasmuch as the petitioner paid the sum of ₱405.38 as deficiency income tax for the year 1949, the amount of ₱136.85 is refundable to him, and the respondent is hereby ordered to refund the said amount to the petitioner.

The deficiency income tax assessments for the years 1951 and 1952 are hereby affirmed, and the refund of the amounts paid as deficiency income tax for the said years is hereby denied.

SO ORDERED.

Manila, Philippines, June 29, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge