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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARMEN M. SORIANO, represented
by A. SORIANO CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2949

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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12/27

D E C I S I O N

In her income tax return for 1976, which was filed on April 14, 1977, petitioner Carmen M. Soriano, represented by the A. Soriano Corporation, reported a gross income of ₱91,961.40, which included, among others, dividends received from the Atlas Consolidated Mining and Development Corporation in the sum of ₱84,247.00 and from which the amount of ₱25,274.70, or 30% thereof, was withheld, remitted and paid by the latter to the Bureau of Internal Revenue. However, the same return also shows that from her gross income of ₱91,961.40, petitioner claimed a total deduction of ₱98,805.86, resulting in a net loss of ₱6,844.46. Petitioner Carmen M. Soriano now seeks the refund of the sum of ₱25,274.70, representing the income tax withheld at source on the dividends received from the Atlas Consolidated Mining and Development Corporation for the year 1976.

Pursuant to the provisions of Sections 292 and 295 of the National Internal Revenue Code, petitioner filed with respondent on April 21, 1978 a written claim for refund of the amount of ₱25,274.70. There being no action seasonably taken by respondent on the said claim, petitioner instituted the present proceeding for the recovery of the income tax withheld on the dividends.

In raising the question of refundability of the sum of ₱25,274.70, petitioner comes to grip with the contention that she is a non-resident alien engaged in trade or business in the Philippines, and under Section 53(b) of the National Internal Revenue Code, the dividends are not subject to withholding tax. Upon the other hand, quoting the pertinent provision of Section 22 of the same Code, which states:

> "x x x x x x x x That for purposes of this Title, a non-resident alien individual who shall come to the Philippines and stay therein for an aggregate period of more than one hundred eighty days during any calendar year shall be deemed a non-resident alien, doing business in the Philippines, x x x."

respondent maintains that petitioner fails to qualify as a non-resident alien engaged in business in the

Philippines because no positive evidence that she had stayed in the country for an aggregate period of more than one hundred eighty (180) days during the calendar year 1976 has been presented. Moreover, respondent would argue that petitioner failed to show proof or documentary evidence that she is actually holding or maintaining an office or a place of business in the Philippines; and the records reveal that she did not incur business expenses for office rental, salaries, telephone bills and the like. (pp. 79-80, CTA records.)

This Court realizes, as contended by respondent, that in an action for refund, the burden of proof is upon the taxpayer to establish its right to the refund and failure to sustain this burden is fatal to the action for refund. However, respondent specifically and unequivocably admitted in his answer to the petition for review "that petitioner is a non-resident U.S. citizen engaged in trade or business in the Philippines, represented in this claim by A. Soriano Corporation, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with offices at A. Soriano Bldg., Ayala Avenue, Makati, Metro Manila x x x." (pp. 1 & 23, CTA records.) Under Section 2, Rule 129 of the Rules of Court, admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake. There is nothing in the records which would show, directly or indirectly, that the admission of respondent that petitioner is a non-resident alien engaged in trade or business in the Philippines had been made through palpable mistake. Facts pleaded in the answer are deemed admissions of the defendant who is not permitted to contradict them, or subsequently take a position contradictory to or inconsistent with, such admissions. (Cunanan vs. Amparo, 80 Phil. 227.)

Again, as pointed out by petitioner, respondent is bound by the testimony of his own witness. Respondent presented as his own witness Mr. Nathaniel Guarin who categorically testified that petitioner is a non-resident alien engaged in trade or business in the Philippines. (pp. 73-74, 97-98, 108-109, t.s.n.) When a party introduces as evidence the testimony of a person, he is bound by all the facts contained therein. (Moran, Comments on the Rules of Court, 1980 Edition, Vol. V, p. 66, citing

2 Chamberlayne, Modern Law on Evidence, p. 1606; 2 Wigmore on Evidence, p. 579; Richard v. Morgan, 10 Jur. N.S. 559, 564.) To say therefore that petitioner Carmen M. Soriano is non-resident alien not engaged in trade or business in the Philippines in 1976 is to incur in self-contradiction.

At any rate, sufficient evidence was presented to establish that petitioner, during the time material to this case, maintained and held office at the 10th floor of the A. Soriano Bldg., Makati, Metro Manila, used in conducting her various business activities in the Philippines as:

1. Principal partner of the Soriamont Investment Company, a foreign partnership authorized and actually engaged in trade or business in the Philippines;

2. Trustee or officer of the A. Soriano Cancer Research Foundation, Inc.;

3. Co-executor of the will of Don Andres Soriano; and

4. Stockholder of several domestic corporations, such as the San Miguel Corporation, Atlas Consolidated Mining & Development Corporation, Philippine Oil Development Company, and other corporations managed by the A. Soriano Corporation.

Having arrived at the conclusion that petitioner is a non-resident alien engaged in trade or business in the Philippines, the dividends of ₱84,247.00 received by her in 1976 from the Atlas Consolidated Mining and Development Corporation are not subject to withholding tax at source pursuant to Section 53(b) of the National Internal Revenue Code. In asking that petitioner's claim for refund of the amount of ₱25,274.70, which was withheld, remitted and paid by the Atlas Consolidated Mining and Development Corporation to the Bureau of Internal Revenue, be denied, respondent would seem to fall back, however, on the proposition that petitioner is subject to income tax on her income derived from the following:

a. dividend income

b. interest income

c. other income - proceeds of sale of fractional share of stock

derived from sources within the Philippines because her claim of the following deductions:

1. <u>Interest expense</u>

a. First National City Bank	- ₱22,627.37
b. A. Soriano Corporation	- 29,131.46
	₱51,758.83

2. Loss

Loss from partnership -
Soriamont Investment Co.-
25% share in net loss --₱47,047.03

were all disallowed on the ground that no sufficient proof or evidence was presented to support the alleged expense or loss. In other words, respondent would seem to imply that even if petitioner is a non-resident alien engaged in trade or business within the Philippines, her entire net income received from all sources within the Philippines would be subject to the tax imposed by Section 21 of the then in force National Internal Revenue Code pursuant to Section 22(a) of the same Code. The case would thus turn upon the question whether petitioner's claimed deductions for interest expense of ₱51,758.83 and loss of ₱47,047.03, or a total of ₱98,805.86, should be disallowed on the ground that no adequate record was presented to support the same.

Revenue Regulations No. 2 require that any claim for deduction must be substantiated, when requested by the Commissioner of Internal Revenue, by record showing in detail the amount and nature of the expenses incurred, (See Section 66, Rev. Regs. No. 2.) While the mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction (De Vera vs. Collector of Internal Revenue, CTA Case No. 164, March 23, 1959; Basilan Estates, Inc. vs. Commissioner of Internal Revenue, L-22494, September 5, 1967, 21 SCRA 17; Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, L-26924, January 27, 1981, 102 SCRA 246), it seems settled that where a taxpayer claimed deductions for certain expenses but no records are available, the deduction may be allowed considering the testimony of the accountant as to the nature of those expenses, which testimony is not contradicted by the Government (Basilan Estates vs. Commissioner of Internal Revenue, supra.) And disallowing amounts claimed for deduction merely because there is no available documentary evidence which will establish the precise amount beyond a reasonable doubt ignores commonly recognized business practices as well as the fact that proof may be established by credible oral testimony. (Cohan vs. Commissioner of Internal Revenue, 39F. 2d 540, cited in Visayan Cebu Terminal vs. Collector of Internal Revenue, L-12798, May 30, 1960, 108 Phil. 320; Gancayco vs. Collector of Internal Revenue, L-13325, April 20, 1961, 1 SCRA

980; Zamora vs. Collector of Internal Revenue, L-15280 & 15289-90, May 31, 1963, 8 SCRA 163.)

Here in the case at bar, petitioner's claimed deductions of interest expense of ₱51,758.83 and loss of ₱47,047.03 were not only substantiated by adequate records showing in detail the amount and nature of the deductions but also established by credible oral testimony which was not contradicted by the Government. Nathaniel Guarin, supervisor of the accounting department of the A. Soriano Corporation, testified that the above interest expense of petitioner arose from loans secured by her from the First National City Bank (pp. 21-22, 33-35, 99-101, 111-115, 122-123, t.s.n.) and the A. Soriano Corporation (pp. 21-22, 35-37, 60-64, 102-103, 117-118, t.s.n.). The loan from the First National City Bank was evidenced by the debit and credit notes issued by the said bank showing payments of interest by petitioner (Exhs. E-2-a; E-2-b; E-2-c; E-2-d; E-2-e; E-2-f & E-2-g), while the loan from the A. Soriano Corporation was evidenced by its certification that it received from petitioner the amount of ₱29,131.46 as interest on her loan (Exh. J), as well the agreement as to the rate of interest chargeable thereon (Exh. P). In accordance with a subpoena ad testificandum and subpoena duces tecum, witness Nathaniel Guarin brought before this Court books of accounts of petitioner Carmen M. Soriano for the year 1976, such as disbursement book, vouchers on interest payment, cash receipts book, journal book and general ledger evidencing petitioner's loans and interest payments. (pp. 39-41, CTA records.) It may be noted that at the time material to this case, no distinction was made between interest on business debts and interest on personal debts to justify a deduction of interest. (1955 PH Fed. Taxes, Par. 13,000.)

The loss of ₱47,047.03 claimed by petitioner as deduction from her 1976 gross income represented her share in the net loss of the Soriamont Investment Company as one of the principal partners thereof. The Soriamont Investment Company is a foreign partnership organized and existing under the laws of California, U.S.A., with Andres Soriano, petitioner Carmen M. Soriano, Jose M. Soriano and Andres Soriano, Jr. as partners. (Exhs. D & D-2; pp. 67-68, t.s.n.) It is authorized to do business in the Philippines, thru its agent, the A. Soriano Corporation. (Exhs. D, D-1 to D-6, O-1; pp. 23-24; 41, 74-75 & 79, 98, t.s.n.) In its income tax return for 1976, the Soriamont Investment Company reported a net loss from its operations of ₱188,188.10. (Exhs. F, F-1 & F-2.) Since under the partnership agreement (Exhs. D-2) petitioner's share in the profit or loss is 25%, she claimed as deduction for 1976 her share in the loss amounting to ₱47,047.03 or 25% of ₱188,188.10. The share of each partner in the income of the partnership, whether distributed or not, is taxable to him, while the loss sustained by the partnership is deductible by each partner to the extent of his share therein. (Sec. 26, National Internal Revenue Code; Secs. 22-23, Revenue Regulations No. 2; Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 20 SCRA 903.) In deducting the amount of ₱47,047.03 representing her 25% share in the net loss of the Soriamont Investment Company, petitioner merely picked up her share in the net loss of the partnership which had already been recognized and admitted by respondent when he refunded the income tax paid by it for the year 1976 in the amount of ₱23,217.00. (Exh. F.)

It is thus clear beyond doubt that with a gross income of ₱91,951.40 for the year 1976 and a total allowable deductions of ₱98,805.86 (interest expense of ₱51,758.83 and loss of ₱47,047.03, or a total of ₱98,805.86), petitioner Carmen M. Soriano incurred a net loss of ₱6,844.46. Accordingly, the withholding and payment of income tax in the sum of ₱25,274.70 for 1976 is erroneous.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Carmen M. Soriano the amount of ₱25,274.70, representing erroneously collected income tax at source for 1976. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 27, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge