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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

May 6, 1963

URBAN ESTATES, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF
INTERNAL REVENUE,,
Respondent.

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

C.T.A.
CASE NO. 640

AMENDED DECISION

Petitioner seeks a reconsideration of our decision of March 28, 1963, dismissing the appeal for lack of jurisdiction in that the petition for review was filed beyond the thirty-day period prescribed in Section 11 of Republic Act No. 1125.

In our decision of March 28, 1963, it was held that the herein appeal should have been filed not later than March 27, 1959, but instead it was filed only on March 30, 1959, three days beyond the statutory period for filing the appeal. However, it has been shown to the satisfaction of the Court that March 27, 1959 was Good Friday, a holiday; that the succeeding day, March 28, was a special public holiday (Proclamation No. 567, March 20, 1959, 55 O.G. 2388); and that March 29, the day following, was Sunday. Therefore, the herein appeal was timely filed on March 30, 1959.

Respondent, in opposing the motion for reconsideration, argues that the thirty-day period within which to appeal a disputed assessment is to be counted from the date of receipt of the assessment and not from the date of receipt by the taxpayer of the decision on the second motion for reconsideration. This question has been amply discussed and summarized in the case of Philippine

Planters Investment Co. Inc., v. Actg. Commissioner of Internal Revenue, C.T.A. Case No. 1266, November 11, 1962, wherein it was stated:

> "A careful review of the foregoing cases will show that the element determinative of the appealability of a decision of the Commissioner of Internal Revenue is its finality. If an assessment is not contested administratively, it is considered as the final decision which is appealable to the Court of Tax Appeals within 30 days from receipt thereof. (Republic v. Magalona, supra; Republic v. Gamboa, supra; Republic v. Albert supra.) If the assessment is contested or the taxpayer files a request for reconsideration thereof, and the assessment is modified or revised, the last unrevised or unmodified decision is appealable (Pangasinan Transportation Co., v. Blaquera, supra; Tomas B. Villamin v. Coll., supra; Ker & Co., supra.) If the request for reconsideration is denied, or the original assessment is maintained, the appealable decision is either the assessment itself (North Camariness Lumber v. Coll., supra; Ker & Co. v. Coll., supra.) or the decision on the request for reconsideration (St. Stephen's Association v. Coll., supra;), depending upon which is the Commissioner's final decision."

From the evidence of record we are of the opinion that the doctrine applicable to the case at bar is that laid down in the case of St. Stephen's Association v. Coll., G. R. No. 11238, August 21, 1958, reaffirmed in the case of Roman Catholic Archbishop of Cebu v. Coll., G. R. No. 16683, January 31, 1962, wherein the decision of the Commissioner on the second motion for reconsideration was treated as the appealable decision.

Having disposed of the jurisdictional question, we now come to the issue of whether or not the amounts of ₱475.00 and ₱540.00, representing audit and legal fees, may be allowed as deductions from petitioner's gross income in 1954.

Respondent invokes the distinction between the cash method of accounting and the accrual method. It is urged that the audit and legal fees became fixed in 1953 when the audit and legal services were rendered to petitioner, and not in 1954 when the bills therefor were received and paid. Apparently, respondent relies on the assumption that the engagement of the auditing firm and the lawyer are on "retainer basis". The facts do not tally with respondent's finding.

Section 40 of the National Internal Revenue Code provides:

> "SEC. 40. Period for which deductions and credits taken.- The deductions provided for in this Title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred,' dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions should be taken as of a different period. x x x" (Underscoring supplied.)

The foregoing provision prescribes that deductions for the taxable year are made to depend upon the accounting method used by the taxpayer. In the case at bar, petitioner used the accrual method of accounting. It employed the services of the firm to audit its books from "year to year" and the fee is determined by the length of service or work done to finish the audit of petitioner's books. The same holds true with respect to the lawyer retained by petitioner on a "case to case basis" and whose fee became definite and accrued only when the case was terminated and upon presentation of the bill to petitioner. Under the accrual method, the "existence of a definite liability is the essence of accrual" (Mertens Vol. 2, par. 12.61, Revised Edition). To an accrual taxpayer the expense is allowable when the liability therefor became fixed, and the amount is either ascertained or ascertainable in the taxable year (See U.S. v. Anderson, 269 U.S. 422; Lucas v. American Code Co., 280 U.S. 445, Brown v. Helvering, 291 U.S. 193). For example, where the amount of legal fees has not been previously agreed upon, it is not deductible until the bill therefor is rendered (Cold Metal Process Co., v. Commissioner of Internal Revenue, 17 TC 916). It has also been held that a fee is not accruable until the amount is fixed even though services were rendered during the taxable year and the fee was not entirely contingent. (Canton Cotton Mills v. U.S., 94 F. Supp. 561; see Kanne v. American Factors Ltd., 190 F (2d) 155). While it may be certain that there were some liabilities for audit and legal services in 1953, the amounts were undetermined until the bills were presented to petitioner in 1954.

With respect to its income derived from interest, petitioner asserts that it has maintained a consistent method of reporting its interest income on cash basis, which method clearly reflects its net income. On the other hand, respondent made the adjustment of petitioner's interest income in 1954 on the ground that the accounting method used by petitioner was irregular and did not clearly reflect its income.

Section 38 of the Revenue Code provides:

> "SEC. 38. General rule.- The net income shall be computed upon the basis of the taxpayers annual accounting period (fiscal

> year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner of Internal Revenue does clearly reflect the income. x x x" (Underscoring supplied)

Although petitioner in this case has adopted a consistent accounting procedure, it is to be noted that it uses the "hybrid method of accounting" i.e., petitioner files its income tax return and declares its deductions on accrual basis but simultaneously reports its interest income on cash basis. We find this irregular. In a similar case, the taxpayer kept its accounts and filed its income tax returns upon the accrual basis except with respect to interest income which was returned upon cash basis from March 1, 1913 to December 31, 1934. It was held that the Commissioner did not err in holding that the interest income should likewise be reported upon the accrual basis. (Schuman Carriage Co., Ltd., v. Commissioner of Internal Revenue, 43 U.S. 880). In view thereof, the adjustment made by respondent as regards the interest income of petitioner is in order.

It appears that errors have been committed by respondent in the computation of the accrued interest income of petitioner. As shown by the testimony of petitioner's witness and corroborated by the admission of respondent's witness, the amount involved is only ₱13,251.17, instead of ₱29,507.78.

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, we find and so hold that the herein appeal was filed within the period prescribed; that the amounts of ₱475.00 and ₱540.00 as audit and legal fees, respectively, are deductible from the gross income of petitioner for 1954; that it is error for petitioner to report its interest income on the cash basis; and that the interest income of petitioner for the year under review is ₱13,251.17, instead of ₱29,507.78. Accordingly, the decision appealed from is hereby modified, and petitioner is ordered to pay to the Commissioner of Internal Revenue, or his authorized representatives, within (30) days from the date this decision becomes final, the amount of ₱2,650.00 as deficiency income tax for the year 1954, computed as follows:

| | |
|---|---|
| Net income per return ----- | ₱30,685.86 |
| Add: Interest income considered earned although not collected -------- | 13,251.17 |
| Net income --------------- | 43,937.03 |
| Tax due thereon ----------- | 8,787.00 |
| Less amount assessed and collected -------------------- | 6,137.00 |
| AMOUNT OF TAX STILL DUE AND COLLECTIBLE -------------- | ₱ 2,650.00 |

If said deficiency tax is not paid within the 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(e)(2) of the Revenue Code, as amended, without pronouncement as to costs.

SO ORDERED.

Manila, May 6, 1963.

ROMAN M. UMALI
Associate Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

Presiding Judge MARIANO NABLE did not take part.