REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RENATO L. LIBORO,
Petitioner,

- versus - C.T.A. CASE NO. 4270

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

3/29/91

D E C I S I O N

This case comes on a precise question of whether or not the loss sustained in earning the professional fees as an individual law practitioner can legally be deducted from or offset against the share or income as a practicing partner in a law office.

Petitioner for the year 1980 declared a deductible loss of P18,115.64, incurred in earning P94,500.00 as professional fees, from his partnership share or income from the Altavas, Liboro & Daza Law Office. Respondent Commissioner of Internal Revenue disallowed the deduction on the ground that loss is not connected with a line of business different from the business from which petitioner earned his partnership share of P55,085.01. Accordingly, petitioner was assessed a

1980 deficiency income tax in a letter dated November 30, 1985 with a demand for the payment of P14,009.84 computed as follows:

Net income per return as audited		P38,063.84
Proposed unallowable deduction and additional income:		
Schedule 1 - Schedular loss (BF Blg. 41 not deductible)		18,115.64
Medicare - Excess (P1,985.40 - P1,000.00)		985.40
		19,101.04
Proposed adjusted income		57,164.88
Less: Personal and add'l exemption		6,000.00
Net income subject to tax		51,164.88
Income tax due thereon		14,273.00
Less: Amount already assessed/paid		6,595.43
Deficiency income tax		7,677.57
Plus interests		4,606.54
		P12,284.11
Plus: Expanded Withholding Tax on Rental of:		
P18,332.28 x 5% ...	P916.61	
25% surcharge	229.15	
Interests	549.97	
Compromise	30.00	1,725.73
TOTAL DEFICIENCY TAX DUE		P14,009.84

On December 19, 1985, petitioner protested the deficiency assessment as consequenced by the disallowance of the loss. Respondent denied the same on May 11, 1988 for lack of legal basis and the inapplicability of the availed Tax Amnesty under Executive Order No. 41 which only covers tax liabilities for the years 1981 to 1985.

Hence, the instant petition for review.

In assailing the legality of the assessment particularly the disallowance of the loss of P18,115.64 suffered in earning his professional fees of P94,500.00 as an individual law practitioner, (Schedule 1), Income Tax Return) from his partnership share or income of P55,035.01 in the Altavas, Liboro and Daza Law Office (Schedule 4, *ibid.*), petitioner avers that the prohibition in Section 30, *infra*, against the deduction of net loss from other sources of income does not apply. The nature of the income while reported in the two separate Schedules 1 and 4 is the same, being derived from the practice of law which is a single activity, accented by the fact that he was the sole partner who generated also the income attributable to the law partnership considering that Altavas was deceased and Daza, on leave in the year in question.

By and large, respondent's unvarying assertion is that "While literally the two activities of the petitioner may involve the 'practice of law' as an individual practitioner and as a practicing partner of the Altavas, Liboro and Daza Law Office, the gross income for taxation purposes cannot however be considered as coming from the same source of income or line of business. Income derived from individual practice of the law profession is certainly different from the share or income in the law partnership. To uphold petitioner's claim that said income is derived from only one source, that is, the practice of law, will defeat the very purpose for which the amendment introduced by Batas Pambansa Blg. 41 in Section 30(d)(1)(A) of the Tax Code, was enacted, to wit: to prevent "unscrupulous individuals by creating sham businesses from which they manage to create artificial or paper losses for the purposes of reducing their taxable net income from other sources." (Explanatory Note, Congressional Journal, August 30, 1979, p. 866).

Be that as it may, the case presents no dispute as to the relatively simple material facts but the parties seem unable to getting their acts together over by a quibble as to the legal moorings of the deductible losses in Section 30 of the Tax Code, insofar as pertinent reads:

> Sec. 30. Deduction from gross income. In computing net income there shall be allowed as deductions -
>
> xxx xxx xxx
>
> (d) Losses:
>
> (1) By individuals. - In the case of individual, losses actually sustained

> during the taxable year and not compensated for by insurance or otherwise.
>
> (A) If incurred in trade, profession or business: Provided, however, That a loss representing the excess over the income, of allowable expenses and other deductions directly or proximately attributable or related to the production or earning of such income from a particular line of business or activity, shall not be allowed as a deduction from or offset against income derived from other sources. xxx.

Let it suffice, the sprouting impression precipitately broached by the petitioner that the two sums of gross income reflected in Schedules 1 and 4 in the Income Tax Returns belong to one and the same line of business or activity can hardly be reassuring prospect that can easily be reconciled with the statutory intendment. Going by the provision of Section 30, *supra*, the net operating loss which comes from a particular line of business or activity including the practice of a profession, cannot be allowed as a deduction from income of other sources. Such distinction has to be taken insofar as the question of taxation is concerned.

And, brought to bear upon the circumstances obtaining, the loss of P18,115.64 allegedly suffered by the petitioner in earning his professional fees of P94,500.00 as an individual law practitioner should not be permitted to shelter his share or income of P55,085.01 in the Altavas, Liboro and Daza Law Office. This seems to be the import and sense of the statute as the two sums of gross income (Schedules 1 and 4) were derived from different sources. Ludicrous and expedient piffle, indeed, if the gross income of the petitioner may not validly be infused cognizance as derived from pursuits much closer to separate treatment than a single activity within the legal contemplation, unless petitioner is unwilling to take the responsibilities or simply unable to discern what they are. Petitioner's posture comes as a convenient crutch for an obvious shortcoming.

Certainly the law requires no more and expects no less, hence, the deficiency assessment must be confirmed.

WHEREFORE, finding the petition to be without merit, the same is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, March 29, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals