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Republic of the Philippines
COURT OF TAX APPEALS
Manila

TAN GUAN,
Petitioner,

- versus -

June 27, 1964

C.T.A.
CASE NO. 853

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

x - - - - - - - - - x

DECISION

The petitioner, Tan Guan, was a partner of the Philippine Surplus Company, a registered general partnership organized on August 17, 1947 by petitioner and one Sia Lin. Being a registered general partnership it was exempt from income tax (Sec. 24, Revenue Code), although it was required to file income tax returns covering its annual business operations (Sec. 49, id.). Under the law, the income of a general partnership is taxable to the individual partners, whether distributed or not, and losses may be claimed as deductions by the partners in proportion to their contributions to the partnership capital. (Sec. 26, id.; Secs. 22-23, Revenue Regulations No. 2.)

For the year 1948, the Philippine Surplus Company filed its income tax return claiming as deductions the following alleged expenses:

1. D.V. Balsicas -
   December 7, 1948 -
   Service rendered in
   overhauling and putting into good running condition 8
   big steam hoists
   at ₱3,500 --------------- ₱28,000

3 smaller steam hoists at ₱2,800 -------------	8,400	₱36,400.00
2. Service of engine -		
February 2, 1948 ------	₱21,000	
March 14, 1948 --------	16,640	
Sept. 11, 1948 --------	24,800	
October 7, 1948 -------	14,500	
November 9, 1948 ------	14,000	
November 16, 1948 -----	13,530	104,470.00
3. Freight charges - December 31, 1948 - Mr. Gonzalo Padua ----------		66,000.00
T o t a l -------------		₱206,870.00

Respondent disallowed the said sum of ₱206,870.00 as deductible business expenses of the partnership thereby resulting in the said amount being treated as income of the partners. Accordingly, one-half of ₱206,-870.00, or ₱103,435.00, was considered unreported income of herein petitioner, and a deficiency income tax for the year 1948 was assessed against him in the sum of ₱50,956.57, computed as follows:

Net income per return ------	₱ 20,987.14
Add: Undeclared profit from the Phil. Surplus Co. ---	103,435.00
Net income -----------------	₱124,422.14
Less: Personal exemption ---	1,000.00
Net taxable income ---------	₱123,422.14
Income tax due -------------	₱ 36,548.86
Less: Amount previously assessed and paid ----	2,577.81
Deficiency tax -------------	₱ 33,971.05
50% surcharge --------------	16,985.52
Total deficiency tax and surcharge -------------	₱ 50,956.57

An assessment was made against petitioner for the aforesaid amount on January 2, 1956 (should be 1957), which was reiterated on March 26, 1958 (Exhs. 4 and 5, pp. 9-10, 29-30, BIR records). Petitioner claims he did not receive the assessment notices. The records show that petitioner transferred to another address without notifying the Bureau of Internal Revenue of such transfer, which prompted the Bureau of Internal Revenue to seek the aid of the Bureau of Immigration and police authorities. Finally, respondent addressed another letter to petitioner in care of his counsel on June 6, 1960. Without contesting the validity of the assessment administratively, petitioner has appealed the case.

Petitioner claims that he is not liable for the deficiency income tax assessment on the following grounds:

> 7. That the assessment and letter of demand of the Commissioner of Internal Revenue, Annex "A" is without any basis, untrue and not in accordance with law; neither the petitioner nor the Philippine Surplus Company having made any undeclared profits as alleged in the letter, Annex "A"; and that the income tax due on the said year 1948 has been duly paid by the petitioner;
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> 8. That admitting without conceding, for the sake of argument, that the herein petitioner had undeclared profits for the year 1948, the government is now barred from collecting from the herein petitioner the said amount of ₱50,956.57, the right of the government to collect the same having prescribed in accordance with the Tax Code; x x x. (See page 2, Petition for Review.)

The sole basis for contesting the disallowance of the expense deductions claimed by the Philippine Surplus Company is the memorandum of an agent of the Bureau of Internal Revenue who recommended that the assessment against Sia Lin be dropped on the grounds that the propriety of the deductions could not be determined because of the absence of records and that the claimed expenses of the partnership were probably reasonable considering that it was engaged in surplus goods. No other evidence was presented in support of the deductibility of said expenses.

Considering the big amounts of expenses alleged to have been incurred by the Philippine Surplus Company and the nature of said expenses, it is really doubtful whether or not said expenses were actually incurred, and it was proper for respondent to have disallowed the same in the absence of evidence in support of their deductibility. The burden of proof is on petitioner to show the legality of the deductions. The failure of petitioner to present any evidence justifies affirmance of respondent's determination.

Petitioner claims that the assessment against his partner, Sia Lin, was dropped by the Bureau of Internal Revenue, and the same rule should be applied to him. It is enough to state here that the allegation that another person similarly situated has not been required to pay or has not paid similar taxes is unjustifiable and should be ignored. (Bank of P.I. v. Trinidad, 45 Phil. 384.)

It is contended that the right of the Government to assess the deficiency income tax in question and to collect the same has already prescribed. Respondent determined, considering the circumstances of the case, that petitioner's income tax return for 1948 was false and fraudulent. No evidence was presented to show that the said return was not fraudulent; therefore, the determination of respondent may not be disturbed. Accordingly, the right of the Government to assess the said deficiency income tax prescribes after ten years from the date of discovery of the fraud. (See Section 332, Revenue Code.) The records show that the report of the examiners recommending the assessment was submitted to respondent on August 10, 1954, and the assessment was made on January 2, 1957. (See pages 5 and 10, BIR records.) Clearly, the right to assess has not prescribed as the assessment was made within ten years from the date of discovery of the fraud.. Under Section 332 of the Revenue Code, internal revenue taxes may be collected by distraint or levy or by judicial action within five years after assessment. Since the appeal in this case was filed by petitioner on July 8, 1960, or within five years from the date of assessment, the right to collect the deficiency income tax has also not prescribed.

Finding the decision appealed from in order, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, June 27, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge