Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JOSE D. VILLEGAS,
Administrator of the
Intestate Estate of IRENE
SANTOS DE VILLEGAS,
Petitioner,

October 7, 1963

- versus - C.T.A. CASE NO. 1044

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from a deficiency income tax assessment against the late Irene Santos de Villegas for the years 1953 and 1954 in the respective amounts of ₱5,663.52 and ₱5,057.14 and against the estate of the deceased for 1954 and 1955 in the sums of ₱184.86 and ₱4,399.14, respectively.

Petitioner Jose D. Villegas is the judicial administrator of the intestate estate of Irene Santos de Villegas who owned fishponds in Pampanga and Bulacan measuring 335 hectares, more or less (t.s.n., p. 9). Income tax returns for 1953 to 1955 were duly filed, reporting gross incomes derived from the fishponds and claiming expense deductions for maintenance and repair of the fishponds in the amounts of ₱22,042.58 (in 1953), ₱42,981.60 (in 1954), and ₱12,554.24 (in 1955), for banca, contributions, bonuses, household expenses, rents, and cash credit balance or disbursements taken from bank accounts (See pp. 79-80, BIR rec.). These deduction claims for maintenance and repair of fishponds consist of expenses for filling up and digging of "pilapil" (dikes) and "sapa" (canals), motor spare parts, planting and pulling seaweeds, "prinsa" or gates, wire fence, lumber, rattan or bamboos, nails, sand and cement, G.I. sheets, wages of laborers, paint or weedkiller spray and gasoline (See pp. 67-74, BIR rec.).

On March 12, 1959, respondent Commissioner of Internal Revenue determined a total deficiency income tax of ₱92,686.00 (Exh. 9, pp. 44-45, BIR rec.). In determining the deficiency, he partially allowed the deduction of the items for maintenance and repair of fishponds and banca only to the extent of 10% on the theory that said items are capital expenditures which should be amortized at 10% per annum. He also allowed the deduction claim for taxes only to the extent of the total amount indicated by the official receipts. However, he totally disallowed the deduction of the expense items for contributions, bonuses, household expenses and cash credit balance (Exh. 4, pp. 4-5, BIR rec.). At the same time, in determining the undeclared income arising from the sale of fish, he fixed the percentage of mortality of seed fish purchased at 25% and 50% (Exh. 4, supra).

On July 14, 1959, petitioner requested a reinvestigation of the deficiency assessment (Exh. 10, pp. 48-49, BIR rec.), which request was denied by respondent on July 21, 1959 (Exh. 11, p. 51, BIR rec.). Again, on

August 7, 1959, petitioner requested a reinvestigation (Exh. 13, pp. 56-58, BIR rec.), which request was granted (Exh. 14, p. 61, BIR rec.).

Upon reinvestigation, respondent's examiner, in his report dated February 5, 1960 (Exhs. 16 & L, pp. 90-92, BIR rec.), recommended that the cash credit balance shown in the original investigation be disregarded; that the deduction claims for motor spare parts, planting and pulling seaweeds, paint and weedkiller spray, and gasoline be allowed; that the disallowance of taxes, bonuses, contribution and household expenses be reiterated; and the expense items for banca, construction of the "prinsa" (gates), filling up of the "pilapil" (dikes), digging of the "sapa" (canals), lumber, rattan, and bamboos be capitalized and depreciated at 10% annually. In computing the income derived from the sale of fish ("bangus"), he fixed the percentage of fish that survived and were sold at 30% and considered the selling price thereof at ₱1.00 per kilo (4 fish to a kilo). Finding that petitioner's declaration of income from the sale of fish exceeded the amount resulting from this computation, he also recommended that the previous assessment for undeclared income from said sale be set aside. On the basis of the examiner's recommendations, respondent Commissioner, on February 22, 1961, reduced the deficiency tax assessment for the years under review to the total sum of ₱15,304.66, including interests (Exhs. 21 & D, pp. 124-127, BIR rec.).

Being dissatisfied with the revised assessment, petitioner filed the present petition for review on April 26, 1961, contesting only the partial allowance of the deduction claims for the construction of "prinsa" (gates), the filling up of the "pilapil" (dikes), digging of the "sapa" (canals), lumber, rattan and bamboos, and the fixing of the percentage of survival of fish ("bangus") at 30%. He also alleged that respondent's right to assess the tax deficiency in question has already prescribed.

As afore-stated, petitioner limited his appeal to contesting the disallowance of a portion of the expenses for the construction of the "prinsa" (gates), the filling up of "pilapil" (dikes), digging of "sapa" (canals), lumber, rattan and bamboos, and the fixing of the number of fish that survived and were sold. But respondent had already withdrawn the assessment for undeclared income arising from the sale of fish. In view of this withdrawal, the resolution of the issue raised by petitioner regarding the application of the 30% minimum survival has become academic. Therefore, the assessment in question stands affirmed with respect to the eliminated item of undeclared income from the sale of fish and the uncontested disallowed items. We shall consider only the issue whether or not the expenses for the construction of the "prinsa" (gates), the filling up of the "pilapil" (dikes), digging of "sapa" (canals), lumber, rattan, and bamboos are capital expenditures which should be amortized at 10% annually.

It is contended by respondent that the expense items for the construction of the "prinsa" (gates), the filling up of "pilapil" (dikes), digging of "sapa" (canals), lumber, rattan, and bamboos are capital expenditures, which should be depreciated annually, because (a) petitioner failed to prove that said expenses were necessary and ordinary, and (b) the same could have been used to construct new dikes ("pilapil") and gates ("prinsa").

Testimonial evidence bears out that the fishponds of petitioner are located beside the Pampanga River; that typhoons, with their consequent floods, annually destroyed and washed away the dikes and levelled the canals; that the materials, like lumber, bamboos, and rattan, used for buttressing the dikes and gates either decayed, deteriorated or were stolen; that passersby, human and animals, trod on the dikes, thereby depressing the height of the dikes; and that small crabs, water snakes and other water creatures, which bored through the walls of the dikes, weakened the foundations of the dikes. These factors necessitated frequent, if not constant, repairs to keep the fishponds in an ordinarily efficient operating condition. These repairs neither appreciably prolonged the life of the fishponds nor increased their value. And it appearing that the fishponds in question measured 335 hectares, more or less, we find that in 1953, petitioner spent for repair an average of ₱65.80 per hectare; in 1954, ₱128.30; and in 1955, ₱37.48. In view of this, we believe and hold that the disallowed expense items were necessary and ordinary chargeable to the operating income, and not capital expenditures subject to depreciation deductions spread over the life of the property.

As regards the defense of prescription of assessment set up by petitioner in his petition for review, we take it that the same has been waived in view of petitioner's failure to discuss it in the memorandum he submitted in support of his stand.

WHEREFORE, the deficiency assessment appealed from is hereby modified. Petitioner is ordered to pay to respondent or his duly authorized representative, within 30 days from the date this decision becomes final, the sum of ₱4,056.00, as computed below:

1 9 5 3

Net income per respondent	₱37,631.81
Less: Repairs & maintenance expenses allowable (disallowed by respondent)	19,589.03
Net income	₱18,042.78
Less: Personal exemption	3,000.00
Amount subject to tax	₱15,042.78
Tax due thereon	₱ 1,737.00
Less: Amount already assessed	837.00
Tax still due	₱ 900.00

Jan. 1 to Nov. 1, 1954

Net income per respondent	₱26,096.81
Less: Repairs & maintenance expenses allowable (disallowed by respondent)	32,720.83
Net loss	₱ 6,624.02

Nov. 2 to Dec. 31, 1954

Net income per respondent	₱ 7,237.26
Less: Repairs & maintenance expenses allowable (disallowed by respondent)	1,407.88
Net income	₱ 5,829.38
Less: Personal exemption	1,800.00
Amount subject to tax	₱ 4,029.38
Tax due thereon	₱ 264.00
Less: Amount already assessed	264.00
	₱ -.-

1955

Net income per respondent	₱44,789.97
Less: Repairs & maintenance expenses allowable (disallowed by respondent)	2,104.65
Net income	₱42,685.32
Less: Personal exemption	1,800.00
Amount subject to tax	₱40,885.32
Tax due thereon	₱10,574.00
Less: Amount already assessed	7,418.00
Tax still due	₱ 3,156.00

If the said amount, or any part thereof, is not paid within said period, there shall be added to the unpaid amount a surcharge of 5%, plus interest, as provided in Section 51(e) of the Internal Revenue Code, as amended. Without special pronouncement as to costs.

SO ORDERED.

Manila, October 7, 1963.

(Sgd.) MARIANO NABLE
Presiding Judge

I CONCUR:

(Sgd.) ROMAN M. UMALI
Associate Judge