Republic of the Philippines
COURT OF TAX APPEALS
Manila

LINO GUTIERREZ,
Petitioner,

- versus -

C.T.A.
CASE NO. 504

January 28, 1962

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

The respondent assessed against the petitioner the sum of ₱11,841.00 as deficiency income tax for the years 1951, 1952, 1953 and 1954, itemized and computed as follows:

1951

Net income per return ----------		₱24,696.11
Add: Unallowable deductions & additional incomes:		
Personal expenses -----	₱ 292.65	
Capital expenditures -	1,668.67	
Fines, penalties and surcharge ----	64.48	
Net income of wife per return ---	2,749.90	4,775.70
Net income per investigation ---		₱29,471.81
Less personal exemptions -------		3,600.00
Amount subject to tax ----------		₱25,871.81
Tax due thereon ----------------		₱ 5,381.00
Less tax already assessed ------		3,981.00
Deficiency income tax due ------		₱ 1,400.00

1952

Net income per return ----------	₱18,833.15
Add: Unallowable deduction:- Personal expenses ---------	2,799.09
Net income per investigation ---	₱21,632.22
Less personal exemption --------	3,600.00
Amount subject to tax ---------	₱18,032.22

Tax due thereon --------------		₱ 3,148.00
Less tax already assessed ------		2,476.00
Deficiency income tax due ------		₱ 672.00

1 9 5 3

Net income per return ----------		₱52,262.40
Add: Unallowable deductions & additional income:-		
Personal expenses ------	₱2,492.85	
Capital expenditures --	145.00	
Overstatement of purchase price of real estate sold -----------	8,476.92	
Understated profit from sale of real estate ----	5,803.74	16,918.51
Net income per investigation ---		₱69,180.91
Less personal exemption --------		3,600.00
Amount subject to tax ----------		₱65,580.91
Tax due thereon ---------------		₱14,966.00
Less tax already assessed ------		9,805.00
Deficiency income tax due ------		₱ 5,161.00

1 9 5 4

Net income per office audit ----		₱66,842.21
Add: Unallowable deductions and additional income:-		
Personal expenses ------	₱2,479.15	
Capital expenditures -	5,146.68	
Understated profit from sale of real estate ---------	5,444.24	13,070.07
		₱79,912.28
Less: Additional deductions and non-taxable income:		
Net loss in Schedule B - disallowed in office audit ---------------		36,030.36
Net income per investigation ---		₱43,881.92
Less personal exemption --------		3,000.00
Amount subject to tax ----------		₱40,881.92
Tax due thereon ---------------		₱10,572.00
Less tax already assessed ------		5,964.00
Deficiency income tax due ------		₱ 4,608.00

(See pages 1-2, Memorandum for the Respondent.)

The deficiency assessment was brought about by the disallowance of portions of certain expenses claimed by petitioner as ordinary and necessary expenses which were treated by respondent as personal expenses and capital expenditures; the consolidation of the net income of petitioner's wife for the year 1951, prior to her marriage to petitioner in the same year, with the income of petitioner for the said taxable year; the alleged overstatement of the purchase price of real estate sold in 1953; and the treatment by petitioner of certain assets sold in 1953 and 1954 as capital assets but which were considered by respondent as ordinary assets the gains from the sales of which resulted in ordinary gains and are taxable in full. After an unsuccessful effort to have the deficiency assessment reconsidered by respondent, petitioner has appealed.

In this appeal, petitioner alleges that respondent committed the following errors:

> I. The respondent erred in his construction and application of the Ballentyne scale with respect to the Padre Faura property which was acquired by the petitioner on June 13, 1943 for ₱35,000.00 and sold by him for ₱30,400.00 on August 28, 1953.
>
> II. The respondent erred in considering the real properties sold by the petitioner in 1953 and 1954 as <u>ordinary assets</u> instead of <u>capital assets</u>; and requiring him to declare 100%, instead of 50% only of the profits derived therefrom as subject to tax.
>
> III. Respondent erred in considering all the income of his wife in 1951 as pertaining to, and taxable jointly with his income, for the same year when their marriage took effect only on July 1, 1951.

> IV. Respondent erred in not holding that the right to collect the alleged deficiency tax for the years 1951 and 1952 had already prescribed.
>
> V. The respondent erred in levying and seizing one of his properties three (3) years after the filing of his 1954 returns.
>
> VI. The respondent erred in considering the expenses covered by several invoices as capital expenditures instead of ordinary or general expenses which are incidental to his principal business of leasing apartment houses and lending money secured by real estate.
>
> (See page 2, Memorandum for the Petitioner.)

In connection with the first assignment of error, it appears that petitioner purchased a parcel of land situated at Padre Faura, Manila, on June 13, 1943, for ₱35,000.00. The same property was sold in 1953 for ₱30,400.00. Petitioner claimed to have sustained a loss of ₱5,231.80 from the transaction. On the other hand, respondent considered the purchase price of ₱35,000.00 as having been paid for in Japanese war notes, and converted the same in Philippine currency under the Ballantyne Scale of values at the rate of ₱1.30 (Japanese war notes) for every ₱1.00 (genuine Philippine currency), so that the acquisition cost attributed to the property is only ₱26,923.08. Accordingly, instead of sustaining a loss, petitioner allegedly derived a gain. Petitioner contests the legality of the application of the Ballantyne Scale of values; and, assuming its applicability, the same should not be applied in this case because the property in question was purchased in genuine Philippine currency.

The question in regard to the applicability of the Ballantyne Scale of values in determining the cost basis of property acquired during the Japanese occupation in Japanese war notes has already been considered by this Court in Esperanza A. Zamora v. Collector of Internal Revenue, C.T.A. No. 194, and Mariano Zamora v. Collector of Internal Revenue, C.T.A. No. 234, both decided on December 29, 1958, wherein it was stated:

> "It is an admitted fact that during certain periods of the enemy occupation, the value of the Japanese war notes was very much less than the value of the genuine Philippine currency. It is for this reason that the Ballantyne Scale of values, which was the result of an 'impartial scientific study,' has been adopted and given judicial recognition. (Garrido v. North Camarines Lumber Co., 44 O. G. 4401; Borlongan v. Pascual, 45 O. G. 222.) If the value of the Japanese war notes in May, 1944, when the property was bought, was one-twelfth of the genuine Philippine peso, and since the gain derived or loss sustained in the disposition of said property is to be reckoned in terms of Philippine peso, the value of the Japanese war notes used in the purchase of the property must be reduced in terms of the genuine Philippine peso to determine the cost of acquisition."

It is, however, contended that the property in question was purchased in genuine Philippine currency in 1943. The evidence for petitioner is not convincing. We do not believe that the Padre Faura property was bought in 1943 for ₱35,000.00 in genuine Philippine currency and sold at a loss in 1953 for ₱30,400.00. We are more inclined to believe that said property was purchased in Japanese war notes. Petitioner is not an inexperienced businessman.

Assuming that the Ballantyne Scale is applicable, petitioner contends that since the value of the peso in 1941 is higher than its value in 1953, the former must be "converted to its equivalent after the war." This point was also answered in Esperanza A. Zamora v. Collector, supra, wherein it was held that "there is no legal basis for considering the rise and fall of the value of the currency in determining the gain derived or loss sustained in the sale or disposition of property. (See Gutierrez v. Collector of Internal Revenue, C.T.A. No. 65, Aug. 31, 1955, affd. in G. R. Nos. L-9738 & L-9771, May 31, 1957.)" To admit the validity of petitioner's stand would give rise to confusion and instability in the enforcement of the Income Tax Law as it is of common knowledge that the purchasing power of the currency as compared to the pre-war value fluctuates very often, especially after the war, depending upon various economic factors.

With respect to the parcels of land which were sold in 1953 and 1954, which were treated by petitioner as capital assets, it is alleged that -

> (a) Petitioner is not engaged in buying and selling real estate, but simply leasing real estate properties, consisting of around 140 apartments and lending money secured by mortgages;
>
> (b) As a person engaged in leasing real properties, those from which he draws income for leasing are capital and not ordinary assets;
>
> (c) That the disputed sales involved lots without improvement and for that reason they are invariably classified as capital assets. (Pages 7-8, Memorandum for Petitioner, April 28, 1961.)

Real property held by the owner thereof for rent is an ordinary asset. (Bautista v. Collector, C.T.A. No. 98, February 18, 1957, affd. in G. R. Nos. L-12250 and L-12259, May 27, 1959.) Petitioner admits that he is "a real estate dealer engaged in owning and acquiring real properties primarily for leasing purposes, having secured a license therefor;" and that "in his capacity as a real estate dealer, <u>petitioner owned real properties in 1951 to 1954 primarily for leasing purposes</u> and during those periods he earned rents, made improvements on his real properties, and sold some of them to earn more for petitioner, resulting in greater income taxes for the Government." (Pars. 1 and 3, Amended Petition for Review, page 47, C.T.A. records; emphasis supplied.) If, as admitted, the properties in question were acquired and held by petitioner as real estate dealer and <u>primarily for leasing purposes</u>, the conclusion is inevitable that said properties were ordinary assets in the hands of petitioner, and the gain derived from the sales thereof are ordinary gain. Consequently, the capital gains provisions of Section 34 of the National Internal Revenue Code do not apply. The fact that due to circumstances beyond his control, said properties had to be sold without actually having them rented will not affect the nature of said properties as ordinary assets.

Petitioner claims that respondent erred in consolidating the income of his wife from January 1 to June 30, 1951, earned prior to the marriage, with his income for that year, and in assessing the income tax on the combined income. It appears that petitioner married his wife on July 1, 1951. Prior to the marriage, his wife had an income of her own for which she filed a separate return. It is contended that the income of the wife prior to the marriage cannot be consolidated with that of the husband. We find no error in the decision of respondent.

Under the law, the net income of a taxpayer is required to be computed on the basis of his <u>annual accounting period</u> in accordance with the method of accounting regularly employed in keeping the books of such taxpayer. (Sec. 38, Revenue Code.) And in determining the net income, it is required that all items of gross income must be included in the gross income for the <u>taxable year</u> in which received by the taxpayer, and all deductions and credits must be taken for the <u>taxable year</u> 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. (Secs. 39 and 40, id.) Finally, the law requires that only one return be filed by each taxpayer for each <u>taxable year</u>. (Secs. 45 and 46, id.) A return for a period less than twelve months is permitted only in the case of corporations as a result of a change in accounting period (Sec. 42, id.) and in the case of death of an individual taxpayer (Sec. 40, id.). There is no law which requires or permits an individual, man or women, to file two returns for the same taxable year, the calendar year, as a result of his or her marriage during the year. As already stated, a return may be filed for a portion of a taxable year in the case of an individual only in case of death of the taxpayer.

That only one return is required to be filed by married persons for one taxable year may also be gleaned from Section 45(d) of the Revenue Code, which provides:

> "(d) Husband and wife. - In the case of married persons, whether citizens, resident or nonresident aliens, only one consolidated return for the taxable year shall be filed by either spouse to cover the income of both spouses; but where it is impracticable for the spouses to file one consolidated return, each spouse may file his separate return of income, but the returns so filed shall be consolidated for the purpose of the tax prescribed under this Title." (Underscoring supplied.)

Then, again, as correctly stated by counsel for respondent, an individual is entitled to only one personal exemption under Section 23 of the Revenue Code, and such personal exemption is determined by his status at the end of the taxable year. Apportionment of the personal exemption for a part of the year is allowable only where the change of status of an individual is occasioned by death of the taxpayer himself. (Sec. 23 (d).) No such apportionment is permitted in case of marriage of the taxpayer or death of a dependent, in which case his status as of the end of the taxable year determines his personal exemption. To permit a woman to file a separate return for part of the year when she was single and for the husband to claim a personal exemption as head of the family by reason of marriage for the latter part of the taxable year would be to grant two personal exemptions to the wife in one year, that of a single individual before her marriage and that of a dependent spouse after the marriage which is not sanctioned by law. The rule that only one exemption may be claimed by an individual for the entire taxable year applies whether the head of the family after the marriage is the man or the woman. The law makes no distinction.

Petitioner claims that the right to collect the deficiency assessment for the years 1951 and 1952 has prescribed, assuming the correctness of such assessment. It is alleged that the return for 1951 was filed in March, 1952, while the return for 1952 was filed on February 28, 1953, and that since no action for the collection of the tax was instituted by respondent for collection until March 4, 1958, when he filed his answer to the petition for review, the right to collect has already prescribed under Section 331 of the Revenue Code which provides that no action may be instituted for collection of an internal revenue tax after five years from the date the return was filed or was due. This is a mistake. The prescriptive period for collection of an internal revenue tax provided in Section 331 is applicable <u>where no assessment has been made</u>. Where an assessment has been made, <u>the right to collect prescribes after five years from the date of assessment</u>, pursuant to Section 332(c). In this case, it is admitted that an assessment was made sometime in April, 1956. (See pars. 5 and 6 of Amended Petition for Review.) Obviously, the right to collect by judicial action has not prescribed as petitioner instituted the present appeal on February 17, 1958. (See Manuel P. Suñga v. Comm. of Int. Rev., C.T.A. No. 676, Oct. 25, 1961, for computation of the five-year period where judicial action is instituted by taxpayer himself by means of an appeal to this Court.)

Another error allegedly committed by respondent is in enforcing collection of the deficiency income tax for 1954 by distraint and levy on February 24, 1958. It is alleged that the 1954 return was filed on February 23, 1955. Therefore, the collection of the 1954 income tax by distraint or levy on February 24, 1958 was two days beyond the three-year period provided in Section 51(d) of the Revenue Code, citing Collector v. Reyes, G. R. No. L-2685, January 31, 1957. Section 51 (d), before its amendment by Republic Act No. 2343, authorized the Commissioner of Internal Revenue to enforce collection of income tax by distraint or levy at any time within three years after the return is due, or has been made. The 1954 income tax return of petitioner was due on March 1, 1955.[1] Therefore, although petitioner filed his return on February 23, 1955, respondent was authorized to enforce collection of the - Reversed by S.C.

[1] See Sec. 45 (c), N.I.R.C., before its amendment by R. A. No. 2343.

tax by distraint or levy on or before March 1, 1958, the last day of the three-year period from the date the 1954 return was due.

Petitioner also claims that it is not right for respondent to have levied upon his real property instead of distraining his personal properties. Section 316 of the Revenue Code authorizes the Commissioner of Internal Revenue to enforce collection of internal revenue taxes by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property. There is nothing in the law which requires the Commissioner to enforce collection by distraint of personal property first and by levy upon real property only after exhausting the personal property of the delinquent taxpayer.

Finally, petitioner assails the legality of the disallowance by respondent of certain deductions claimed by the former as ordinary and necessary expenses. The disallowance is based on respondent's findings that some of the expenses were personal in nature and, therefore, not allowable deductions under Section 31 (a)(1) of the Revenue Code, while the others were disallowed on the ground that they were capital expenditures which must be amortized, pursuant to Section 30 (f) and Section 31(a)(2) of the same Code.

There are two categories of expenses claimed by petitioner as deductions from his gross income during the years under review. The first refers to expenses which were disallowed on the ground that they are personal expenses; the second refers to expenses considered by respondent as capital expenditures. Petitioner has only half-heartedly sought to justify the deductibility of the alleged personal expenses. As regards the alleged capital expenditures, even the memorandum of counsel for petitioner is silent. Petitioner has harped on the presumed prejudice of respondent as a result of the dismissal of his assessment against petitioner for war profits tax.

Assessments of the Commissioner of Internal Revenue are presumptively correct. The burden is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner is wrong but that he is right. In this, petitioner has failed.

Finding no error in the decision appealed from, the same is hereby affirmed *in toto*, with costs against petitioner.

SO ORDERED.

Manila, January 28, 1962.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge