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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. L. AMMEN TRANSPORTATION, CO., INC.,
Petitioner,

- versus -   C.T.A. CASE NO. 540

JOSE ARAÑAS, COMMISSIONER OF INTERNAL REVENUE,
Respondent.

X - - - - - - - - - - - - - - - X Nov. 18/61

DECISION

This is an appeal from the decision of the Commissioner of Internal Revenue assessing against and demanding from petitioner deficiency income tax for the years of 1950 and 1951 in the respective amounts of ₱62,363.00 and ₱33,948.00, inclusive of 50% surcharge.

Petitioner is a corporation organized under the laws of the Philippines and engaged in land transportation business. As of 1950, it operates 264 units of buses.

On February 28, 1951 and March 18, 1952, petitioner filed its income tax returns for 1950 and 1951, respectively. The returns were accompanied by profit and loss statements and balance sheets duly certified by an independent certified public accountant. On the basis of these returns, petitioner paid the sums of ₱17,972.00 and ₱72,167.00 as income tax for 1950 and 1951, respectively.

On March 23, 1953, petitioner filed amended returns. In the amended return for 1950, it repo reported only 25% of the dividends it received in the amount of ₱18,880.00, or only ₱4,720.00. In the 1951 amended return, it deducted from the gross income the respective sums of ₱109,670.18 and ₱25,937.35, as expenses for tires; ₱3,750.00, as rental payment; and ₱47,200.00, the amount of the stock dividends alleged to have been erroneously reported as income in 1951. On the basis of these amended returns, petitioner requested the refund of the income tax it allegedly overpaid.

In consequence of petitioner's letters, dated September 25, 1953 and March 31, 1954, wherein the prompt examination of petitioner's claim for refund and books was requested, respondent refunded to petitioner on May 3, 1955 the amount of ₱21,273.56.

On January 7, 1955, examiner Arsenio R. Teves recommended that petitioner be assessed deficiency income tax, including 50% surcharge, for 1950 in the amount of ₱134,867.46, and for 1951 in the amount of ₱163,267.50.

On February 3, 1955, after a review of the examiner's recommendation, Teofilo Ora, Acting Chief of the Field Inspection Service, found that the records do not show that fraud was committed by petitioner, and recommended to respondent that the Auditor of petitioner be invited for conference to thresh out the discrepancies.

On February 11, 1955, Simeon Gianan, Provincial Revenue Agent of Naga City, wrote a letter to respondent stating that some errors had been noted in the treatment of items and requested the correction of the errors with the help of petitioner.

After a reinvestigation in which an independent auditor, Jose M. Olmedo, who was employed by petitioner for this purpose, cooperated, or on March 16, 1955, Teofilo Ora, then City Revenue Agent, prepared a memorandum stating that the disallowed items were in reality ordinary and necessary expenditures; that the general ledger of petitioner and its subsidiary records truly reflected the business transaction of petitioner; and that examiner Arsenio R. Teves made a haphazard investigation and report. Hence, he recommended a deficiency income tax assessment petitioner only for the year 1951 in the amount of ₱4,090.00. 00 In view of the substantial reduction of deficiency recommended by City Revenue Agent Ora and because the years under review were far beyond the prescriptive period, E. Y. Paragas, Chief of the Tax Audit Branch, recommended, in his memorandum dated August 14, 1957, to the Regional Director that the case be referred to the Investigation Branch for review and recommendation. And in a memorandum, dated November 26, 1957, E. Y. Paragas recommended to the Regional Director the approval of the report of reinvestigation.

However, on May 5, 1958, Reviewer C. G. Bacay recommended that the sundry expenses during the years 1950 and 1951 in the amounts of ₱143,314.69 and ₱66,222.08, respectively, be disallowed for the reason that they were capital expenditures. He also recommended that the contingency reserve of ₱14,606.55 be included in petitioner's income for 1951.

On the basis of Bacay's recommendation, respondent, in a letter dated May 13, 1958, assessed against and demanded from petitioner the amount of ₱62,463.00 and ₱33,948.00, as deficiency income tax for 1950 and 1951, inclusive of 50% surcharge.

On June 4, 1958, petitioner requested reinvestigation. Without, however, waiting for respondent's answer to its request, petitioner appealed to this Court on June 10, 1958.

The issues presented for our resolution are as follows:

> 1. Whether or not the right of respondent to assess and collect the deficiency income tax in question has prescribed;
>
> 2. Whether the sundry expenses in the sums of ₱143,314.69 for 1950 and ₱66,222.08 for 1951 are business or capital expenditures; and
>
> 3. Whether or not the disallowance of the sum of ₱14,606.55, representing contingency reserve, is justified.

With respect to the first issue, petitioner maintains that the right of respondent to assess and collect the deficiency income tax in question has prescribed. On the other hand, respondent contends otherwise, arguing that, since petitioner had filed fraudulent returns, he is authorized to assess the deficiency income tax within ten (10) years from the time of the discovery of the fraud on May 5, 1958.

To resolve the variant views of the parties, it is necessary to determine whether or not petitioner has filed false or fraudulent returns with intention to evade the payment of taxes.

The deficiency income tax assessment in question arose from the disallowance of expense items in the respective sums of ₱143,314.69 and ₱66,222.08 on the ground that these items should be capitalized. Petitioner, however, believes that they are deductible as ordinary business expenses. Mere disagreement of petitioner relative to the treatment accorded by the Commissioner of Internal Revenue to an expense can hardly be called fraudulent. Moreover, these disputed items are disclosed in petitioner's original returns. This disclosure nullifies the charge of fraud in the filing of the returns. Finally, it must also be noted that petitioner extended full cooperation with respondent's agents during the investigation of its tax liability. This latest circumstance also tends to show the good faith of petitioner in the determination of its tax liability. Therefore, it cannot be said that petitioner filed fraudulent tax returns, with intent to evade the payment of taxes.

There being no fraud, with intent to evade the payment of taxes on the part of petitioner, respondent could assess the deficiency tax in question only within five (5) years from the filing of the original income tax returns. The deficiency assessment having been made only on May 13, 1958, more than five (5) years had already elapsed since the filing of the original returns on February 28, 1951 and March 18, 1952. Consequently, we find and so hold that the right of respondent to assess and collect the deficiency income tax in question has prescribed. (Coll. of Int. Rev. vs. Bautista, G.R. No. L-12250, May 27, 1959; Commissioner of Internal Revenue vs. Central Azucarera de Tarlac, G.R. No. L-11768, July 31, 1958; Coll. of Int. Rev. vs. De Los Angeles, G.R. No. L-.9899, Aug. 13, 1957; Carlos R. Gomez vs. Melecio R. Domingo, CTA Case No. 1168, Feb. 15, 1964.)

It is, however, suggested that the filing of the amended income tax returns suspended the running of the prescriptive period. This is erroneous. The original returns in question are sufficiently complete to enable respondent to intelligently determine the proper amount to be assessed. The fact that amended returns were filed later neither started anew the running of the statute of limitations, nor extended its period. (Phoenix Assurance Co., Ltd. vs. Comm. of Int. Rev., CTA Cases Nos. 305 & 543, Feb. 14, 1962, citing Burford Oil Co. vs. Commissioner, 153 F 2d 745; Peerless Iron Pipe Exchange, Inc., 23 BTA 900; Vitamin Co., 21 BTA 311; Mabel Elevator Co., 2 BTA 517; National Refining Co. of Ohio, 1 BTA 236; Hotel de Soto Co., TC Memo Op. Dkt. 3215 (1945).

It is also claimed by respondent that petitioner is estopped from raising the defense of prescription because it had waived the defense when it filed amended corporate returns and claim for refund of overpayments. The filing of the amended returns and claim for refund could not have misled respondent in assessing the correct amount of tax, if any was due, because, as afore-stated, the original returns were sufficiently complete so as to become a basis for such assessment. It could not, therefore, constitute a waiver of the defense of prescription.

Having held that the right of the Commissioner of Internal Revenue to assess and collect the deficiency income tax in question has prescribed, the determination of the two other issues becomes unnecessary.

WHEREFORE, the decision appealed from should be, as it is hereby, reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 10, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

WE CONCUR:

ROMAN M. UMALI
Associate Judge

ALEJANDRO B. AFURONG
Associate Judge