Republic of the Philippines
COURT OF TAX APPEALS
QUEZON CITY

KAPATIRAN REALTY
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4259

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - x

5/24/93

D E C I S I O N

Petitioner moves that the assessment made for its 1978 deficiency income tax amounting to P38,343.39, inclusive of interest (Exhibit "A", p. 31, C.T.A. records), be cancelled and that the warrant of distraint (Annex "C", p. 6, C.T.A. records) issued to enforce collection thereof be likewise enjoined for allegedly having no factual or legal basis and that the same have prescribed.

The facts as borne by the records disclosed the following:

1. On 25 November 1983, petitioner received from respondent a letter-assessment, dated 15 November 1983, assessing petitioner a deficiency income tax and interest of P38,343.39 for taxable year 1978;

The deficiency assessment was due to the disallowance, as a deduction from the gross income, of P65,691.00 loss on the sale of real property.

(See Exhibit "A", p. 31, C.T.A. records.)

2. On 19 December 1983, petitioner filed a letter-protest on the above-assessment with the Assessment Branch, BIR Revenue Region No. 4-A, Manila.

It was claimed that the losses were incurred in the ordinary course of the taxpayer's business and that the same were actually sustained and charged off by said taxpayer in 1978 and were not compensated for by insurance or otherwise.

(See Exhibit "B", p. 32, C.T.A. records.)

3. On 23 March 1988, respondent served petitioner a warrant of distraint of personal property relative to the 1978 assessment of P38,343.39 (Annex "C", p. 33, C.T.A. records)

4. On 20 April 1988, petitioner filed with this Court the instant petition for review (p. 1-3, C.T.A. records.)

Submitted for the resolution of this Court are the following issues, to wit:

1. Whether or not the disallowance, as deduction of the P65,691.00 loss on the sale of real property, is proper.

2. Whether the assessment as well as the warrant of distraint have prescribed.

Deductions are a matter of legislative grace and the taxpayer in every instance has the burden of justifying the allowance for any deduction claimed. Only those deductions which are expressly provided by law are to be allowed. Generally, however, before an expense is allowed as deduction from gross income, it must satisfy three requirements, namely:

(a) The expense must be both ordinary and necessary;

(b) The expense must be paid or incurred within the taxable year; and

(c) The expenses must be incurred in carrying on a trade or business.

(Aranas, Updated National Internal Revenue Code (7th ed. 1988), p. 75)

Losses are among other expenses allowed as deduction from gross income. The term "losses," as used in income tax law, is not specific. However, it is limited to losses not covered under other headings such as bad debts. Only losses which are not

general or normal to the ordinary course of business are within the meaning of that term in the income tax law (1955 CCH Fed. Tax Course, par. 598).

In the case of a corporation, all losses actually sustained and charged off within the taxable year, and not compensated for by insurance or otherwise, shall be allowed as deductions in computing taxable income (Section 30(d)(2) now Section 29(d)(2), NIRC). In general, losses deductible are losses in the taxpayer's trade or business; losses in profit-seeking transactions; and casualty losses.

The loss on the sale of real property amounting to P65,691.00 claimed by petitioner as a deduction from its 1978 gross income was disallowed by the revenue examiner because it was not duly supported by evidence (Memorandum, p. 109, BIR records). On the other hand, petitioner averred that it constituted a valid deduction ("Protest", p. 32, C.T.A. records). No evidence, however, was presented by petitioner in support of said loss even when it could easily have produced the same if it wanted to. The records of the case do not also show proof of the loss incurred. Since all presumptions are in favor of the correctness of tax assessments, it is incumbent on the taxpayer to show clearly that the assessment is erroneous, in order to be relieved of it (Collector v. Bohol Land Transportation Co., 107 Phil. 965). Failing to do so, the assessment necessarily stands.

As to the timeliness of the assessment, as well as of the warrant of distraint, quoted below are the pertinent provisions of the 1977 Tax Code:

> "Section 318. (now Section 203). Period of limitation upon assessment and collection. - Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years (now three years) after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code. (Underscoring Supplied.)

> Section 319 (now Section 223.) Exceptions as to period of limitation of assessment and collection of taxes.
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> x x x x
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> (c) Where the assessment of any internal revenue tax has been made within the period of limitation above-described, such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years (now three years) after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon." (Underscoring supplied.)

From petitioner's filing of its 1978 Annual Income Tax Return on April 16, 1979 to the date respondent made the assessment on November 15, 1983, a period of four (4) years and seven (7) months has lapsed. This is still within the five (5) year period allowed under Section 318, NIRC, within which the assessment shall be made. The period counted from the date respondent made the assessment on November 15, 1983 to the date the warrant of distraint on personal property was served on March 23, 1988 to petitioner was only four (4) years, four (4) months and eight (8) days. Again, the five (5) years limitation provided under Section 319, NIRC, within which the assessed tax may be collected by distraint was complied with.

In view of the foregoing, we find no basis for petitioner's allegation that the assessment, as well as the warrant of distraint have prescribed. The facts undisputedly show that the same were issued well within the period prescribed by law.

WHEREFORE, the petition for review is dismissed for lack of merit. Petitioner is hereby ordered to pay respondent Commissioner of Internal Revenue its 1978 deficiency income tax assessment of P38,343.39, inclusive of interest.

SO ORDERED.

Quezon City, Metro Manila, May 26, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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 among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals