ny

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LIMPAN INVESTMENT CORPORATION,
Petitioner,

versus CTA CASE NO. 1139

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x Dec. 16/64

D E C I S I O N

This is an appeal from the decision of respondent dated July 10, 1961, assessing against petitioner a deficiency income tax of ₱14,278.84 for 1958.

Petitioner, a duly organized domestic corporation with office at Suite No. 208, Vicenta Building, Nueva St., Manila, filed its income tax return for 1958 (Exhibit A, p. 14, BIR rec.), reporting therein a gross income of ₱267,702.64. It deducted therefrom the sum of ₱174,178.66, thereby leaving a net income of ₱93,523.89. After verification of the said return, respondent issued on July 10, 1961 a deficiency income tax assessment against petitioner calling for the payment of ₱14,278.84 computed as follows:

ACR-1187-61/58

| | |
|---|---|
| Net income per return . . . . . . . | ₱ 93,523.98 |
| Additional Income: | |
| 1. Constructive Receipt of rental income . . . . | 10,800.00 |
| 2. Interest expense disallowed | 20,000.00 |

| | |
|---|---|
| 3. Christmas presents - recipients unknown . . . . | ₱ 9,450.00 |
| 4. Bonus to employees disallowed . . . . . . . . . | 7,000.00 |
| Net income per investigation . . . | ₱ 140,773.98 |
| Tax due thereon . . . . . . . . . | ₱ 31,416.00 |
| Less: Amount already assessed . . | 18,705.00 |
| B a l a n c e . . . . . . . . . . | ₱ 12,711.00 |
| Add: ½% monthly interest from 6-20-59 to 7-10-61 . . . . . | 1,567.84 |
| AMOUNT STILL DUE & COLLECTIBLE . . | ₱ 14,278.84 |

The above deficiency income tax assessment was caused by the inclusion of rental receipts in petitioner's 1958 gross income and the disallowance of certain deductions claimed by petitioner for the same year.

The principal issues submitted to the Court for resolution are: (1) whether or not the rental income should be included in petitioner's 1958 income; and (2) whether or not the bonus, interest and Christmas expenses are deductible from petitioner's gross income in 1958 under Section 30 of the National Internal Revenue Code.

First Issue -

Constructive Receipt of Rental Income - ₱10,800.00. Petitioner claims that the rental income of ₱10,800.00 paid by Go Tong Electrical Supply for 1958 should be declared for income tax purposes in 1959 because its declaration of income was based on the actual cash receipt method of accounting. It contends that the rental income due petitioner in 1958 was deposited in court by its tenant, and, therefore, the same was custodia legis. The rental payment deposited in court by the tenant was actually withdrawn by petitioner from judicial custody only in July, 1959. Consequently, petitioner contends that the sum of ₱10,800.00 should not be included as a part of its gross income for 1958.

Respondent, however, maintains the view that petitioner was in constructive receipt of said rental in 1958 and, therefore, it should be included and declared in its income tax return for 1958 because petitioner could have withdrawn without difficulty said amount in court in 1958 if it wanted to. In short, the withdrawal of the rentals paid by the tenant was left at the pleasure of petitioner.

Respondent's stand is well taken. The evidence shows that the sum of ₱10,800.00 represents the 1958 accumulated rental due to petitioner on three (3) doors of the Liberty Building occupied by Go Tong Electrical Supply (p. 23, t.s.n.). The rental was consigned or deposited in court, instead of an outright payment, because petitioner refused to accept the original monthly rental of ₱900.00 and insisted in collecting the increased monthly rental of ₱1,200.00.

Petitioner admits that the rental of ₱10,800.00 was deposited in court by Go Tong Electrical Supply because of its refusal to receive a lower rent. However, it objects to the inclusion of said rental in its 1958 gross income because Go Tong Electrical Supply allegedly filed in court a counterclaim in a civil suit instituted by petitioner against Go Tong Electrical Supply, a pretension not supported by the evidence of record. But, even granting arguendo that petitioner's allegation is true, still the rental of ₱10,800.00 should be included in petitioner's 1958 gross income, in line with the decision of the Supreme Court between the same party litigants, which held as follows:

> "The withdrawal in 1958 of the deposits in court pertaining to the 1957 rental income is no sufficient justification for the non-declaration of said income in 1957, since the deposit was resorted to due to the refusal of petitioner to accept the same, and was not the fault of its tenants; hence, petitioner is deemed to have constructively received such rentals in 1957. The payment by the sub-tenant in 1957 should have been reported as rental income in said year, since it is income just the same regardless of its source." (Limpan Investment Corporation v. Commissioner of Internal Revenue, et al., G.R. No. L-21570, July 26, 1966).

Accordingly, we hold that the rental of ₱10,800.00 forms part of petitioner's taxable income for 1958.

Second Issue -

Interest Expense of ₱20,000.00. - This amount represents 4% annual interest paid to Dña. Vicenta Pantangco Vda. de Lim in 1958 on an alleged indebtedness of ₱500,000.00. Respondent disallowed its deduction from gross income on the ground that the payment of interest has not been stipulated and that the alleged sale of real property of Vicenta Vda. de Lim to petitioner was simulated.

From the evidence gathered in CTA Case No. 1397 involving the parties herein and the evidence adduced in the present case, it appears that Mrs. Vicenta Vda. de Lim transferred real properties valued at ₱312,000.00 and cash amounting to ₱221,000.00 to her son, Isabelo P. Lim, the president of petitioner corporation, who subsequently conveyed the said properties and cash to petitioner. After a partial liquidation, the alleged balance was treated by petitioner as a loan of ₱500,000.00. The credit in favor of Isabelo P. Lim was transferred to Mrs. Vicenta Vda. de Lim in settlement of an alleged indebtedness. In pursuance of a resolution of petitioner's Board of Directors directing the treatment of the acquired real property as a loan and the payment of 4% annual interest thereon, petitioner allegedly paid interests of ₱10,000.00 to Isabelo P. Lim on February 13, 1958 (Exh. F-2) and ₱10,000.00 to Isabelo P. Lim and Vicenta Pantangco (Vda. de Lim) on December 4, 1958 (Exh. F-3).

Petitioner's allegation that the claimed deduction was paid as interest on an indebtedness in favor of Mrs. Vicenta Vda. de Lim is not sustained by the evidence. The fact that this alleged interest was paid to Isabelo P. Lim and Mrs. Vicenta Vda. de Lim belies the said allegation.

( Moreover, the loan originally owed to Isabelo P. Lim cannot earn interest in the absence of a stipulation in writing (Art. 1956, Civil Code of the Philippines). If no interest could be exacted on the original loan, it follows that no interest could be collected when it was transferred to petitioner, notwithstanding the certificate of indebtedness which was executed by petitioner's president and secretary-treasurer on December 15, 1961, two (2) years after the filing of the present petition for review. )

Third Issue -

Christmas Presents - ₱9,450.00. - This amount represents the cost of clothing materials, textile and shirts given as Christmas presents to petitioner's laborers and members of their families, postmen, messengers and bank tellers (p. 120, t.s.n., session of January 12, 1966). Its deduction from petitioner's gross income was disallowed by respondent for being a non-legitimate business expense, and for being an expense appropriate for the year 1957.

The deduction was properly disallowed. In a previous case (Limpan Investment Corporation v.

Comm. of Internal Revenue, CTA Case No. 1358, September 20, 1967), a similar deduction by the same taxpayer was disallowed. This Court held:

> "Respondent disallowed the deduction of the amount of ₱13,-703.75 spent by petitioner for Christmas presents which were given to petitioner's employees, their families, friends and government employees. The expenditure is not denied by respondent who, however, disallowed its deduction for being a personal expense of petitioner's stockholders. Petitioner contends that whether considered in the nature of creating good will among individuals having business dealings with petitioner or as additional compensation of individual construction workers and their families, it is deductible.
>
> "Petitioner's contention is not well taken. The mere allegation that the expense was made for the purpose of creating good will unaccompanied by evidence that it was a necessary business expense does not justify its deduction. Expenditures which are made solely for the purpose of creating good will are not deductible. (See Mertens, Law of Federal Income Taxation, Vol. 4, p. 367.) Similarly, donations made to employees and others, which do not have in them the element of compensation for services are not deductible from gross income (see Sec. 72, Revenue Regulation No. 2). For this reason, and on the admission of petitioner's own witness that the gifts were indiscriminately given to employees and non-employes of petitioner (pp. 35-42, t.s.n.), the deduction has been properly disallowed."

Moreover, even on the assumption that said amount of ₱9,450.00 is deductible as a business expense, it cannot be deducted in 1958 because petitioner's return is based on actual receipt and disbursement method of accounting. Consequently, the amount of ₱9,450.00 should have been deducted in 1957 when its disbursement was actually made.)

Fourth Issue -

Bonus Payable - ₱7,000.00. - The deduction of this amount was claimed as a reasonable additional compensation to certain officials of the corporation, namely: Rosendo R. Orengia, Vicente G. Solis, Venancio Manipol and Teofanes Amor. The deduction from gross income was disallowed by respondent for having been made prematurely in 1958 since the expense was incurred in 1959.

(The disallowance is justified. The evidence shows that the alleged bonuses were granted on January 16, 1959 (see Cash Vouchers and checks covering payment marked Exhibits J, J-1, K, K-1, L, L-1, M, M-1 & M-2, pp. 69-77, CTA rec.). Under the cash receipts and disbursements method of accounting, the deduction must be made during the year the expense was paid. Inasmuch as the alleged bonuses were paid in 1959, the deduction thereof from gross income should be claimed during that year and not in 1958.)

WHEREFORE, finding no error in the deficiency income tax assessment of respondent appealed from, the same is hereby affirmed. Petitioner is hereby ordered to pay respondent its 1958 deficiency income tax of ₱14,278.84 inclusive of ½% monthly interest thereon from June 20, 1959 to July 10, 1961, plus a surcharge of 5% of the unpaid amount and interest of 1% a month prescribed by Section 51 of the Tax Code. With costs against petitioner.

SO ORDERED.

Quezon City, December 16, 1967.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge