REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE OIL DEVELOPMENT CO., INC.
Petitioner,

- versus -

C.T.A. CASE NO. 3405

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

3/9/93

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

# D E C I S I O N

This is an appeal interposed by the petitioner from the decision of respondent demanding payment of alleged deficiency income and withholding taxes for the year 1975 in the amounts of P428,697.60 and P18,787.14, respectively, inclusive of interest and surcharge.

Petitioner, Philippine Oil Development Co., Inc. (PODCO), is a domestic corporation engaged in the oil exploration business with principal office in Makati, Metro Manila. [Admitted in the Answer.] It is managed by A. Soriano Corporation acting as its general manager. Petitioner maintains its books of account in the accrual basis. For the year 1975 petitioner's only source of income comes from interest, rental, sales of scrap materials and income from certain projects in Tiwi, Albay.

No income was derived from its principal business since nothing was produced from the exploration of oil.

For the first, second and third quarters of 1975, petitioner filed with the Bureau of Internal Revenue its Quarterly Income Tax Return each showing "NIL" as tax due for the quarters. [Exhs. A, A-1, and A-2.] On April 19, 1976, petitioner filed its Annual Income Tax Return for the year ending December 31, 1975. [Exh. B.] Petitioner reported a total income of P1,502,354.00 [See Schedule I, Exh. B-2]. The sum of P1,796,780.00 as general and administrative expenses [See Schedule II, Exh. B-3] were deducted from its income. A loss of P294,426.00 was reflected in the income tax return for 1975. Having suffered a loss, petitioner did not pay any tax due the government. The income and expenses for the year 1975 are itemized below, to wit:

Schedule I
(Exhibit B-3)

PHILIPPINE OIL DEVELOPMENT COMPANY, INC.
1975 INCOME TAX RETURN

INCOME (LOSS) FROM OTHER SOURCES

| | |
|---|---|
| Interest Income | |
| Hongkong and Shanghai Banking Corp. | P 147,877 |
| Ayala Investment and Development Corp. | 171,520 |
| Philippine American Investment Corp. | 61,539 |
| CCP Securities Corp. | 33,875 |
| Phil. Pacific Capital Corp. | 300,877 |
| Bancom Development Corp. | 163,880 |
| AEA Development Corp. | 233,084 |
| O t h e r s | 177,334 |
| | P1,289,986 |

| | |
|---|---|
| Income from Rent | 32,275 |
| **Sale of scrap materials, SSS commissions, etc.** | **101,938** |
| Income from Tiwi Project | 78,155 |
| Total | P1,502,354 |

Schedule II
(Exhibit B-3)

PHILIPPINE OIL DEVELOPMENT COMPANY, INC.
1975 INCOME TAX RETURN

GENERAL AND ADMINISTRATIVE EXPENSES

| | |
|---|---|
| Management Fees | P 120,000 |
| Salaries and Wages | 426,959 |
| Postage, Telephone and Telegram | 61,362 |
| Stationary and Supplies | 40,077 |
| Taxes and Licenses | 1,187 |
| Medical and Hospital Expenses | 15,811 |
| Legal and Audit Fee | 25,970 |
| Travelling Expenses | 51,922 |
| Freight and Handling Expenses | 3,265 |
| **Donation and Representation** | **70,154** |
| Power, Light and Water | 14,758 |
| Rentals and Leasehold Improvements | 139,063 |
| Repairs and Maintenance | 37,229 |
| Interest Expenses | 6,935 |
| Insurance and Bonds | 7,708 |
| Bonus | 33,900 |
| Depreciation | 60,411 |
| Advertisements and Annual Reports | 242,424 |
| Hotel Expenses | 11,639 |
| Maps, Blueprints and Reproduction | 8,745 |
| Sundry Bank Charges | 5,240 |
| Capital Increase Registration & Other Expenses | 115,638 |
| SSS Premium, Medicare and ECC | 19,427 |
| Sundry Stock Expenses | 22,481 |
| Miscellaneous Expenses | 219,194 |
| IBM Service Charges | 19,661 |
| Office Expenses | 13,986 |
| Sports and Recreation | 1,634 |
| Total | P1,796,780 |

On April 22, 1981, petitioner received from respondent an assessment notice and letter dated April 13, 1981 for alleged deficiency income tax of P428,697.60, deficiency withholding taxes of P18,787.14 and P300.00 as compromise penalty for non-filing of quarterly returns for the first, second and third quarters all for the year 1975. [Exhs. C, C-1, C-2 and C-3] However on April 28, 1981, petitioner received from the BIR a letter dated April 15, 1981 informing the former that it had no deficiency fixed and percentage taxes for 1975. [Exh. D.]

Respondent disallowed some items of deductions and added as part of petitioner's income those alleged to have been underdeclared or unreported. The alleged deficiency income tax for 1975 was based on the following computations: [Exh. C.]

ACR-04B-32-002900-75/81

| | | |
|---|---|---|
| Net loss per return ........................ | | (P294,426.00) |
| Add: Unallowable Deductions & additional Income: | | |
| (a) Accts. Rec'ble on rental of machinery & equipment | P 30,000.00 | |
| Mobilization cost from Iloilo to Tiwi, Albay ... | 33,000.00 | |
| (b) Sales of Carbonate Studies | 466,290.00 | |
| (c) Undeclared inc. from sales of scrap materials: | | |
| Total income..P103,028.96 | | |
| Amt. reported per return ... 101,938.00 | 1,090.96 | |
| (d) Various unsupported expenses | 359,359.02 | |
| (e) Donations & representation expenses (unsupported)... | 71,200.50 | 960,940.48 |

| | |
|---|---|
| Net income per investigation ................ | P666,514.48 |
| Income tax due thereon ...................... | P233,280.00 |
| Add: 50% surcharge .......................... | 111,640.00 |
| 14% int. fr. 4/16/76 to 4/15/79 ....... | 93,777.60 |
| AMOUNT DUE AND COLLECTIBLE .................. | P428,697.60 |

Likewise, for the alleged failure of petitioner to remit the correct amount of withholding taxes on wages for the second quarter of 1975, respondent assessed the amount of P18,787.14, representing alleged deficiency withholding taxes for 1975, inclusive of surcharge and interest, computed as follows: [Exh. C]

| | | |
|---|---|---|
| Total tax withheld for the quarter ending June 30, 1975 ...................... | | P 24,682.72 |
| Less: Remittance for the quarter under OR# 795618 on 6/9/75 .................. | P7,052.55 | |
| OR#796105 on 7/8/75 ..... | 6,810.15 | 13,862.70 |
| Deficiency withholding tax .............. | | P 10,820.00 |
| Add: 5% Surcharge ....................... | | 541.00 |
| 12% int. fr. 7/26/75 to 4/15/81 ... | | 7,426.12 |
| AMOUNT DUE AND COLLECTIBLE .............. | | P 18,787.14 |

On April 30, 1981, petitioner protested the assessments. [Exh. E.] On December 22, 1981, petitioner received from respondent a letter dated September 15, 1981 stating that a reinvestigation of the case cannot be had due to its refusal to execute and sign the Waiver of the Statute of Limitations. Respondent therefore demanded payment of the assessments above-mentioned. [Exh. F.]

On January 5, 1982, petitioner filed a petition for review seeking the cancellation of the assessments issued by respondent.

As an affirmative defense, respondent claimed that the assessments were issued in accordance with law. He added that the amount of P64,000.00, representing accrued rental income from the lease of machinery and equipment, were not reported as income by petitioner. In like manner, income from the sales of carbonate studies and scrap materials were unreported and underdeclared. The deductions claimed by petitioner must be justified and substantiated pursuant to Section 30(a)(1) of the Tax Code. The expenses incurred in the United States by the parent company and later charged to petitioner by a debit memo are not deductible under Section 30(a)(2) of the same Code.

As regard the deficiency withholding tax for 1975, respondent alleged that petitioner failed to pay the correct amount of P24,682.72 giving rise to the assessment of P18,787.14, inclusive of interest and surcharge. Petitioner was charged to pay the compromise penalty of P300.00 for its failure to file its first, second and third quarters income tax returns for 1975, in violation of Presidential Decree No. 30 dated October 27, 1972, as implemented by Revenue Regulations No. 12-72 dated December 1, 1972.

The issues raised are:

1. Whether or not petitioner is liable for deficiency income and withholding taxes for 1975 in the amounts of P428,697.60 and P18,787.14, respectively;

2. Whether or not petitioner is liable to pay the 50% fraud surcharge; and

3. Whether or not petitioner is liable to pay the compromise penalty of P300.00.

On the first question, petitioner claims that the assessments lack legal and factual basis to stand on.

We shall first discuss the disputed Deficiency Income Tax Assessment for the year 1975 in accordance with the items appearing in the assessment of respondent.

**1975 Deficiency Income Tax Assessment:**

| | | |
|---|---|---|
| **(a)** | **Accounts Receivable on rental of machinery & equipment** | **P30,000.00** |
| | **Mobilization cost from Iloilo to Tiwi, Albay** | **P33,000.00** |

Sometime in January 1975, petitioner, subcontractor, leased machinery and equipment in favor of Parson's Corporation, contractor. [Exh. G.] The parties agreed that the machinery and equipment located in Cebu and Iloilo shall be delivered to Tiwi, Albay for the account of Parson's. The subcontract agreement took effect upon acceptance of the equipment approximately July 16, 1975. It was provided therein that petitioner-subcontractor shall be paid the amount of P30,000.00 mobilization cost for the transportation of the equipment and its accessories. [Exh. G-3.] It was further agreed that one-half of one month's rent (P33,000.00) shall be paid upon satisfactory delivery of the equipments leased. [Exh. G-1.]

On July 24, 1975, petitioner sent Debit Note No. 75-10, dated July 24, 1975, to Parson's Corporation charging the latter for the following amounts: [Exh. H-1.]

| | |
|---|---|
| Mobilization cost from Iloilo to Tiwi, Albay per Article 3 of Subcontract No. 1-SC-5451-4 ........................ | P30,000.00 |
| 50% Advance Rental for Items 3.1, 3.2, 3.3 and 3.4 per Exhibit "B" No. 1.5 | 33,000.00 |
| Total | P63,000.00 |

On July 31, 1975, Journal Entry No. 159 was entered in the books of petitioner, as follows: [Exh. H]

| | | Debit | Credit |
|---|---|---|---|
| Accounts Receivable | | P63,000.00 | |
| Other Income-Tiwi Proj. | | | P33,000.00 |
| BD-1 | P13,000.00 | | |
| BD-2 | 9,000.00 | | |
| FT-1 | 6,000.00 | | |
| CT-4 | 5,000.00 | | |
| | P33,000.00 | | |
| Suspense Account | | | 30,000.00 |

To record Debit Note sent to Parson's Corporation representing 50% Advance Rentals for Machinery/Equipment and Mobilization Cost from Iloilo to Tiwi, Albay as per attached.

Respondent contends that petitioner failed to declare and include as part of its income the mobilization cost of P30,000.00 and the 50% advance rental of P33,000.00. Petitioner should have reported as income the accounts receivable (in Journal Entry No. 159), having adopted the accrual basis of accounting. In the accrual method, all income and expenses are recorded the moment the right to receive and the obligation to pay arises.

Petitioner stressed that the rental income of P33,000.00 (not P30,000.00 as declared by respondent in his assessment) was actually declared to form part of gross income. During the hearing of this case, petitioner was able to adduce evidence to prove that indeed the amount of P33,000.00 rental income was actually declared and reported in its gross income.

On August 14, 1975, petitioner sent a Credit Note to Parsons crediting the amount of P33,000.00, representing 50% Advance Rental, in its favor. [Exh. H-3.] Journal Entry No. 209 was entered in the books of petitioner to reverse the previous entry, as follows: [Exh. H-2.]

| | Debit | Credit |
|---|---|---|
| Other Income-Tiwi Project | P33,000.00 | |
| Accounts Receivable - Others | | P33,000.00 |

To record Credit Note sent to Parsons Corporation for 50% Advance Rentals of Machinery/Equipment as per attached.

On August 6, 1975, petitioner sent Debit Note No. 75-14 [Exh. H-5] to Parson's in the amount of P50,099.20. On the same date, petitioner recorded the transaction in its books under Journal Entry No. 212, the following: [Exh. H-4]

| | | Debit | Credit |
|---|---|---|---|
| Accounts Receivable | | P50,099.20 | |
| Other Income-Tiwi Project | | | P48,640.00 |
| TD-1A BD-1 | P10,440.00 | | |
| D-7E-BD-2 | 16,120.00 | | |
| FT-1 | 6,930.00 | | |
| CT-4 | 6,000.00 | | |
| LB-TI-1 | 6,400.00 | | |
| PT-4 | 1,000.00 | | |
| SC-5 | 750.00 | | |
| Radio | 1,000.00 | | |
| Contractor's Tax Payable | | | 1,459.20 |

To record Debit Note to Parsons Corp. for Equipment/Machinery Rentals for the period July 17-21, 1975 as per attached.

It seems that respondent failed to consider Journal Entry Nos. 209 [Exh. H-2] and 212 [Exh. H-4] when it issued the assessment in question. Respondent did not interpose any objections to the admission of Exhs. H (JE# 159), H-2 (JE# 209), H-4 (JE# 212), H-1 (Debit Note # 75-10), H-3 (Credit Note dated August 14, 1975) and H-5 (Debit Note No. 75-14) which were all offered by petitioner in support of its claim that the amount of P33,000.00 was recorded in its income, contrary to the opinion of respondent that the same was unreported.

Journal Entry No. 209 reversed the original entry in Journal Entry No. 159. But the amount of rental income of P33,000.00 actually forms part of other income from Tiwi Project recorded in Journal Entry No. 212. All along the amount of P33,000.00 was in fact recorded in the books and reported as other income.

The mobilization cost of P30,000.00 (not P33,000.00) represent the cost of transportation of the equipment leased by petitioner to Parsons. The amount of P26,017.08 was paid to charter the equipments from Cebu to Oton, Iloilo to Tiwi, Albay. [Exhs. I-1, I-2, I-3, I-4 and I-5.] Petitioner also paid for the insurance of the equipments shipped as well as the salaries and wages of the crew responsible for the delivery of the machinery and equipments. Parsons reimbursed the amount of P30,000.00 in favor of petitioner. [Exh. I-7, Cash Receipt Book 1975].

Since the mobilization cost was an expense by petitioner and later reimbursed by Parsons, the amount of P30,000.00 does not form part of income but rather a deduction from petitioner's expense. The mobilization cost represents merely reimbursement for the transportation cost of said equipments.

Respondent therefore should not have considered this as income because the same was never claimed by petitioner as a deduction. In fact, the reimbursement of this expense was deducted from the expense account of petitioner. Nothing was gained from this transaction.

(b) Sales of Carbonate Studies P466,290.00

Respondent's examiner who conducted an investigation on the books of petitioner has this to say: [Exh. 1, BIR record.]

> "It appeared from the record that in 1975, PODCO sold its carbonate studies to Phillips Petroleum Company for a total amount of $66,000.00 or P466,290.00. This total amount was paid by Phillips Petroleum Company on June 5, 1975 evidenced by PODCO'S Official Receipt No. 14582 dated June 5, 1975. This transaction was entered in the cash receipt journal page 25 and in the General Ledger under the account titled 'Other Income - Sales of Scraps Materials, etc...... P466,290.00.' For details, see worksheet marked Exhibit - 3.
>
> For income tax purposes, PODCO failed to declare the said sales as part of its income in the total amount of P466,290.00"

Sometime in 1970, petitioner hired Dr. Albert V. Carozzi of the University of Illinois, an expert in the study of carbonates or limestones. The contract was for a five year term beginning 1970 to 1975. Two chief geologist were assigned to assist the consultant. Dr. Carozzi also hired and trained a first-class micropaleontologist. A micropaleontologist is a geologist specializing in Paleontogy or the study of fossils in relation to the determination of the age of a rock. A laboratory and library was created to assist him in his field operations.

As explained to Us by petitioner's witness, the carbonate study or geological study is the first phase in the oil exploration used by oil companies. The second is the seismic exploration. The study will eventually lead to the prediction of oil possibilities being present in the Philippines. From 1970-1975, petitioner incurred expenses in its carbonate study program conducted by Dr. Carozzi. [Exhs. P and P-1.] The expenses related to this study were all supported by evidence consisting of the Official Receipts, Cash Vouchers, Cash Disbursements Book and Journal Books from 1970 to 1974. [Exhs. P-1-a up to P-1-vvvvvvvvvvvvvvv, inclusive of their submarkings, which were not objected to by respondent.] A summary report of that study was prepared and submitted to petitioner. [Exhs. O, O-1, O-2, O-3, O-4, O-5 and O-6.]

On April 23, 1975, petitioner entered in a joint venture agreement with Phillips Petroleum Company Philippines (Phillips for short), a Delaware, U.S.A. corporation, to conduct a program of seismic operations in the Philippines particularly in the Central Visayas (within the "Area of Mutual Interest") in connection with its oil exploration. [Exhs. N and N-1.] The parties agree to share the costs and expenses in carrying out the program at the ratio of 70:30. Petitioner shall shoulder 30% of the expenses and Phillips 70% thereof. [Exh. N-2, TSN dated Sept. 30, 1982, p. 11.]

As it is Phillips recognizes the completed carbonate study conducted by petitioner. By the terms of the Joint Venture Agreement [Exh. N-3], Phillips paid the amount of US$66,000.00 or P466,290.00, representing its share (70%), as complete compensation to petitioner for the cost of said study. The amount of P466,290.00 did not form part of petitioner's income because the same was never claimed as a deduction. The 70% of the expenses incurred for the carbonate study was reimbursed by Phillips. And since the reimbursement of this amount never formed part of the expenses of petitioner no gain should therefore be reported.

**(c) Undeclared income from sales of scrap materials:**

| | | |
|---|---|---|
| **Total Income** | **P103,028.96** | |
| **Amount reported per return** | **101,938.00** | **P1,090.96** |

Respondent claims that petitioner under declared its income from scrap materials, SSS commissions, etc. thru mathematical error in the amount of P1,090.96. Respondent's examiner affixed his working paper [Exh. 3-c, BIR record.] showing a total income from sale of scrap in the amount of P103,028.96 per General Ledger Account No. 605.

Petitioner in its protest stated that it shall reserve the right to disprove the amount of P1,090.96 in

Court since this amount is too insignificant to justify a thorough review of the records to reconcile the same. However, petitioner in its petition for review merely alleged that the amount of P101,938.00 was the correct amount of sales of scrap materials. It did not present any evidence to show that indeed it was the correct amount. In fact no mention whatsoever was made in the memorandum of petitioner. It is therefore safe to assume that petitioner is foregoing its right to contest this amount.

For failure to overcome the burden of proof, the presumption of correctness lies with respondent. As gathered by respondent's examiner a mathematical error was the result of the discrepancy of P1,090.96. In view of this finding, We see no fraud being committed on the part of petitioner. As it is, error in computation is not sufficient to detect fraudulent intent. No willful act can be discern from an error committed in computation. Still We find the amount of P1,090.96 insignificant to finally say there was fraud in under declaring as part of petitioner's income said amount. In fact, the revenue examiner admits there was a mathematical error committed. Thus, an error cannot be a state of mind in committing fraud since it was not willful act in the first place. Therefore, the 50% fraud penalty should not be imposed against petitioner.

(d) Various unsupported expenses P359,359.02

Respondent disallowed the total amount of P359,359.02 representing total expenses for capital increase registration, sundry stock, advertisement and annual report, traveling, postage, telephone and telegrams, freight and handling and miscellaneous expenses in 1975 which were not evidenced by invoices or receipts showing the names of the persons by whom the same were incurred and/or paid by ANSOR Corp., N.Y., U.S.A. for and in behalf of PODCO or to show that the same were incurred and/or paid by PODCO during the year 1975.

The main trust of the disallowance was the failure of petitioner to show the invoices or official receipts for said expenses.

A. Soriano Corporation, as manager of petitioner, entered into an agreement on July 1, 1973 with ANSOR Corporation, a corporation organized and existing under the laws of the State of Delaware, U.S.A., in order to avail the services of the later to fully service the corporations it manages in the Philippines. By the terms of agreement, ANSOR shall provide the following services in the U.S.A. and Canada to ANSCOR and its managed-affiliate companies in the Philippines, pertinent provision is quoted hereunder, to with: [Exh. Q-2]

> "(c) Assist in the registration of the securities of SORIANO's managed-and-affiliate companies with the U.S. and/or Canada S.E.C. and the listing of such securities in the U.S. and/or Canada stock exchanges; handle stockholder relations for these companies which have shares traded in the U.S. and/or Canada; arrange dividend payments; resolve stockholders' queries and problems: draft, edit and distribute the necessary annual, quarterly and special reports; liaise with the U.S. and Canadian stock transfer agents."

It was further agreed that a service fee shall be collected by ANSOR Corp. which fee shall be exclusive of out-of-pocket expenses incurred by ANSOR and the professional fees payable to third parties shall be billed separately.

For the year in question, ANSOR advanced payments of printing costs of subscription certificates and books, postage, labor cost of typing and labelling materials, transfer fees for stock transfer, research charges, air freight charges, transportation expenses, proxy soliciting materials and annual reports. The corresponding xerox copies of payment requests and invoices and checks issued and paid by ANSOR were sent to petitioner for reimbursement.

During the trial, petitioner presented documentary evidence to substantiate the disallowed expenses of P359,359.02. The evidence consist primarily of returned checks of ANSOR Corp. with the attached payment requests or billings of third parties addressed to ANSCOR all for the account of petitioner an others xerox copies of invoices and proxy invoices in the name of petitioner. [Exh. R, R-1 to R-12, S and S-1, T, T-1 and T-2, U, U-1 and U-2, V, V-1 to V-17, W, W-1 to W-93, X, X-1 to X-44, Y, Y-1 to Y-33, Z, Z-1 and Z-2, AA, BB and BB-1 to BB-5, inclusive of their submarkings. Respondent's counsel did not object to the formal offer of evidence in fact he admits the same.

We are convinced that petitioner has presented proof to substantiate the expenses above-mentioned except the Miscellaneous Expenses.

With respect to the Miscellaneous Expenses related to the above-transactions, no proof was ever presented by petitioner to rebut the findings of respondent. No payment requests, billings or checks issued by ANSOR were sent to petitioner with respect to the miscellaneous expenses incurred by the latter. Thus, the following entries in the Journal Book which formed part of the Miscellaneous Expenses in the sum of P86,547.81, itemized below: [Exh. 3-a, BIR record.]

| 1975 | Journal Entry Nos. | Account Debited | Gen. & Adm. Expenses |
|---|---|---|---|
| April 30 | 72 | Miscellaneous expenses | P .70 |
| Aug. 31 | 190 | Miscellaneous expenses | 8,361.70 |
| Dec. 31 | 315 | Miscellaneous expenses | 76,750.00 |
| Dec. 31 | 386 | Miscellaneous expenses | 1,435.68 |
| | | Total Unsupported expenses | P86,547.81 |

were properly disallowed by revenue examiner.

(e) Donations and representation expenses (unsupported) P 71,200.50

The revenue examiner who conducted an investigation on the books of petitioner disallowed the sum of P71,200.50, itemized as follows: [Exhs. 1, 3-e and 3-f, BIR record.]

| | | |
|---|---|---|
| (a) | Total expenses for donation & representation, incidental and miscellaneous expenses, which were accounted from advances to Staff and Employees, but which were not evidenced by invoices or receipts | P 5,179.59 |
| (b) | Accounts payable set up in the books of accounts representing expenses for travelling expenses, not supported by invoices or receipts to show the names of the persons to whom the same were incurred during 1975 | 777.60 |
| (c) | Total donation and representation expenses deducted as part of general and administrative expenses in 1975 which were unsupported by invoices or receipts | 65,243.41 |
| | Total Disallowed Donation and Representation Expenses | P71,200.50 |

Petitioner on the other hand failed to present any evidence to support its claim that this amount represents advances to its leader-employees for athletic and recreational activities such as bowling, excursion, disco and fellowship nights. The advances were liquidated and receipts, whenever available, were surrendered. Bus or taxi fares, tips to waiters, snacks and small restaurant bills were not receipted but were approved by petitioner and claimed as a deduction to its income.

Deductions are matters of legislative grace. One who claims entitlement thereto must point to some specific provisions of the statute in which that deduction is authorized and must prove that he is entitled to the deductions which the law allows. [1955 PH Fe. Tax Course, par. 1801.]

The requisites for deductibility of business expenses are: [Sec. 30(a), NIRC]

a. The expenses must be ordinary and necessary;

b. It must be paid or incurred during the taxable year necessary in carrying on any trade or business; and

c. Adequate records must be kept to support the deduction.

Petitioner failed to show the third requirement. Thus, the Court agrees to the examiner's findings relative to the donation and representation expense of P71,200.50.

To recapitulate, after considering the unallowable deductions and unreported income, the Court has arrived at the following computation:

| | | | |
|---|---|---|---|
| Net Loss per return | | | (P294,426.00) |
| Add: Unallowable Deductions & Additional Income: | | | |
| (a) Undeclared income sales of scrap materials | | | |
| Total income | P103,028.96 | | |
| Amount reported | 101,938.00 | P 1,090.96 | |
| (b) Various unsupported expenses | | 86,547.81 | |
| (c) Donations & representation expenses (unsupported) | | 71,200.50 | 158,839.27 |
| Net Loss | | | (P135,538.73) |
| Tax Due | | | NIL |

After taking into consideration the Court's findings, it appears from the foregoing computation that petitioner still incurred a loss. Thus, no deficiency income tax shall be due from petitioner.

**1975 Deficiency Withholding Tax on Wages**

For the second quarter ending June 30, 1975, respondent alleged that although petitioner had deducted and withheld the total amount of P24,682.72 it only remitted the amount of P13,862.72. The difference of P10,820.00 represents the unremitted withholding taxes for the second quarter of 1975. [Exh. 3-p, BIR record.]

During the trial, petitioner presented the following documentary evidence to prove actual remittance of withholding taxes:

a. Returned checks of petitioner showing the Commissioner of Internal Revenue as payee [Exhs. J, J-1, J-2 and J-3];

b. Tax Payment Acceptance order all in the name of petitioner fully received by respondent's office [Exhs. K, K-1, K-2 and K-3]; and

c. Cash Vouchers to support said payments in favor of respondent [Exhs. L, L-1, L-2 and L-3].

Respondent for his part did not present any evidence to refute the same. In fact, respondent concedes to the admission of petitioner's evidence. Having accomplished its goal, We are convinced that petitioner has actually remitted to the respondent the withholding taxes due the government. The withholding tax assessment should therefore be cancelled.

Since no deficiency income and withholding taxes are due from petitioner, the discussion of the second and third issue is moot. Still to refute the contention of respondent that petitioner failed to file its first, second and third quarters income tax return, petitioner presented in evidence said returns showing the BIR stamp receipts and the date when respondent's office received the same. [Exh. A, A-1 and A-2.] It is therefore, apparent that petitioner did not violate the provisions of Presidential Decree No. 30, dated October 27, 1972 as implemented by Revenue Regulations No. 12-72, dated December 1, 1972.

**WHEREFORE**, in view of the foregoing, respondent's decision is hereby **SET ASIDE**. The Deficiency Income and Withholding Tax Assessments in the amounts of ₱428,697.60 and ₱18,787.14, respectively, for the year ending December 31, 1975 and the ₱300.00 compromise penalty issued and imposed by respondent are hereby **CANCELLED**. No costs of suits.

**SO ORDERED.**

Quezon City, Metro Manila, March 9, 1993.

**ERNESTO D. ACOSTA**
Associate Judge

**WE CONCUR:**

**MANUEL K. GRUBA**
Associate Judge

**RAMON O. DE VEYRA**
Associate Judge

# CERTIFICATION

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