REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INDUSTRIAL TEXTILES
MANUFACTURING CORPORATION
OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3805

6/10/88

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

Disputed in this appeal is the decision of respondent Commissioner of Internal Revenue dated March 19, 1984 holding petitioner Industrial Textiles Manufacturing Corporation of the Philippines, Inc. liable of the amount of P65,554.15 as deficiency income tax for the year 1974 inclusive of interest.

The antecedent facts of this case as stated by petitioner and admitted by respondent are as follows:

PETITIONER by counsel respectfully alleges:

1. THAT it is a domestic corporation created and organized under and by virtue of the laws of the Republic of the Philippines, with offices at Epifanio delos Santos Avenue (EDSA), Mandaluyong, Metro Manila where it may be served with notices, writs, processes and other legal papers; and respondent is the incumbent head of the Bureau of Internal Revenue with offices at the National Office, BIR Bldg., Diliman, Quezon City, Metro Manila where he may be served with summons, notices, writs, processes and other legal papers;

2. THAT petitioner is engaged in the business of manufacturing bags, sacks and other industrial textiles manufactured from imported and local raw materials, for sale to customers;

3. THAT it filed its 1974 income tax return on time, deducting from its gross income, among others, the following "miscellaneous expenses":

Doubtful accounts written off	- P 86,292.13
Accelerated depreciation, overclaim.	- 60,392.74
Share in salaries, ANSCOR	- 71,507.68
	P218,192.55

4. THAT on November 20, 1979 it received a deficiency income tax assessment dated October 29, 1979 demanding from petitioner payment of alleged income tax liability of P108,443.98 computed by respondent by disallowing the expenses enumerated in par. 3, above, resulting in a "net income per investigation" of P5,489,597.13;

5. THAT petitioner contested the said assessment on December 19, 1979;

6. THAT respondent made a final decision on the protest by allowing deduction of "doubtful accounts written off" in the amount of P86,292.13 but reiterating the disallowance of the other two items, namely:

Accelerated depreciation, overclaim	-	P60,392.74
Share in salaries, ANSCOR	-	71,507.68

resulting in a new demand for payment of P65,554.15 as deficiency income tax for 1974 inclusive of interest.

Alleging that the reduced assessment of P65,554.15 is without any basis in law and in fact, petitioner appealed to this Court.

It was established during the trial that in 1974 petitioner was already registered with the

Board of Investments as a preferred non-pioneer enterprise for the production/manufacture of bags under Republic Act No. 5186. (Exh. B.) And in a letter dated February 2, 1969 (Exh. F), petitioner agreed with the proposal of Mr. Zoilo Castrillo, Jr., Management Services Manager of A. Soriano y Cia (Anscor for short) "to conduct special study or review of Itemcop's (petitioner's) present policies and methods with the end in view of attaining optimum efficiency in its operations at the least cost".

As presented by the parties, the issues for resolution are:

1. Whether or not the disallowance by respondent of P60,392.74 as excess accelerated depreciation and P71,507.69 as share in salaries was proper and legal.
2. Whether or not the assessment had prescribed.

<u>Overclaimed Accelerated Depreciation</u>

<u>P60,392.74</u>

As a registered preferred enterprise under Republic Act No. 5186, petitioner claimed in its income tax return for 1974, accelerated depreciation on its fixed assets in the total amount P673,601.00, pursuant to the provisions of Section 27(b) of said Act. However, upon verification of petitioner's 1974 income tax return, the investigating examiner recomputed the accelerated depreciation allowable based on the schedule of machinery and equipment (Exhs. E & E-1) furnished by petitioner and found the deduction for accelerated depreciation overlaimed by P60,392.74. (See pp. 67 & 68, BIR records.)

In a letter dated October 21, 1976 (Exh. 6, pp. 97 to 101, BIR records), petitioner's counsel, averring that the above findings of respondent's examiner "could have been due to the failure of the worksheets submitted to him to indicate accurately the repairs and modifications made on the machineries", attached therewith an analysis of the accelerated depreciation charged for 1974 showing that petitioner underclaimed by P10.04 the maximum accelerated depreciation deduction it was entitled to under Republic Act No. 5186. (See Annexes A & A-1, pp. 95 & 96, BIR records.)

A comparison of the computations submitted by both parties, summarized to project the differences between them, is attached herewith as Annex "A".

It is relevant to note that the differences between the two computations lie only in the accelerated depreciation allowable on the machineries and repairs in the Extrusion Mills Section. Insofar as the accelerated depreciation on the fixed assets in the other five sections are concerned, the Beaming Section, the Cops Winding Section, the Twisting Section, the Weaving Mills and the Finishing Section, petitioner adopted the findings of respondent.

Respondent contends that the overclaimed deduction of accelerated depreciation on the machineries and repairs in the Extrusion Mills Section in the amount of P60,392.74 was disallowed for failure of petitioner to dispute the correctness of the computation of the investigating examiner based on the first schedule submitted by petitioner. (Exhs. E & E-1, see also pp. 65-66, BIR records.) The revised schedule in the computation subsequently submitted by petitioner

(Annexes A & A-1, pp. 95-96, BIR records) shows repairs and modifications not reflected in the first schedule, which were not duly substantiated by petitioner. Furthermore, petitioner failed to notify respondent which depreciation rate it would use as prescribed in Section 27(b) of Republic Act No. 5186, as follows:

> "(b) Accelerated Depreciation. -
> At the option of taxpayer and in accordance with the procedure established by the Bureau of Internal Revenue, fixed assets may be: (1) depreciated to the extent of not more than twice as fast the normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten years or less; (2) depreciated over any number of years between five years and expected life if the latter is more than ten (10) years and the depreciation thereon allowed as a deduction from taxable income; Provided, That the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it."

Petitioner maintains that respondent's disallowance of the deduction for accelerated depreciation is not due to lack of notice to the Bureau of Internal Revenue, which argument respondent has abandoned, but only because petitioner allegedly did not dispute the computation of the examiner. It is asserted that the computation petitioner filed with respondent contained "all the information needed to compute the accelerated depreciation", thereby shifting the burden of proof to respondent to justify the disallowance he made. But since respondent failed to discharge this burden, his determination must be reversed.

The position of petitioner is untenable. The rule is well settled that the Commissioner's assessment is prima facie or presumptively correct and the burden of proof is on the taxpayer to show the contrary. To meet the burden of overcoming the prima facie correctness of the Commissioner's determination, the taxpayer is required to do more than come forward with the best evidence obtainable. He must show the Commissioner's determination to be in error. (Steel or Bronze Piston Ring Corp., 13 TC 636.)

As pointed out earlier, the discrepancies between respondent's and petitioner's computations for the accelerated depreciation allowable on some fixed assets, pertained only to those in the Extrusion Mills Section. With respect to the accelerated depreciation on the fixed assets in the other sections, petitioner adopted in its computation the figures in respondent's computation in effect conceding the validity of the findings of respondent thereon.

No explanation was offered by petitioner to account for the above mentioned discrepancies between the two computations. To controvert respondent's computation, petitioner merely relied on its computation with the bare statement that "all the information needed by respondent's examiner to verify the correctness of the deduction taken was supplied to them", (Petitioner's memorandum, p. 44, CTA records), but introduced no evidence whatsoever to prove this. Said computation, standing alone, is self-serving and insufficient to overcome the presumption of correctness which attaches to the determination of respondent.

It is repeatedly stated that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. (Lino Gutierrez vs. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; See also Tan Guan vs. Court of

Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to present evidence or proof in support of his allegations in his petition for review, as in this case, conformably to the doctrine of the presumption in favor of the correctness of tax assessment (Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13462, April 29, 1960,, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer. (Caresosa vs. Bureau of Internal Revenue, CTA Case No. 3713, January 25, 1985, certiorari denied in G.R. No. L-70758, August 30, 1985.)

Respondent's disallowance of overclaimed accelerated depreciation of P60,292.74 is therefore sustained.

<u>Share in Salaries, ANSCOR</u>

<u>P71,507.68</u>

The amount of P71,507.68 allegedly representing "share in salaries, ANSCOR", was disallowed by respondent not only because it is neither ordinary nor necessary, but also because the expense was incurred not in 1974 but in previous years.

On the other hand, petitioner claims that the sum of P71,507.68 was an ordinary and necessary business expense deductible under Section 30(a) of the Tax Code because it was the cost of a project proposed by Anscor and accepted by petitioner in 1969. Under the agreement, Anscor conducted, on a continuing basis, studies of the management systems and procedures of petitioner to reduce cost of operation by improving efficiency.

The authority of Anscor to conduct special study or review of petitioner's policies and methods under the February 2, 1969 agreement (Exh. F) included "the power to inaugurate or implement the results of the study whether this will mean retention, modification or change in Itemcop's present policies and methods of conducting its business. Itemcop should be furnished with detailed reports of the said studies conducted and modifications or changes made if any. Your compensation shall be based on the number of men assigned to conduct the study and the length of time devoted thereto. Itemcop should be furnished in advance the number of men who will conduct a particular study".

Note that compensation is based on the number of men assigned to conduct the study and the length of time devoted thereto. Moreover, petitioner should be furnished in advance the number of men who will conduct a particular study. And the agreement was entered into in February, 1969, while the year involved in this case is 1974. The bare statement therefore of petitioner that the project spilled over to 1974 and even beyond, and the undertaking was on continuing basis, without adequate and sufficient evidence as to the basis of compensation paid, number of men assigned, the length of time devoted to the particular study and the nature of such study in 1974, has no weight with the Court. How can a report in 1970 or 1976 be considered a detailed report of studies conducted and modifications or changes made in 1974 as required in the agreement? A report submitted in 1970 or 1976 cannot by any stretch of the imagination be considered a detailed report of studies conducted, modifications made or changes carried out in 1974.

The regulations require that any claim for deduction must be substantiated by record showing in detail the amount and nature of the expenses incurred. (Sec. 66, Rev. Regs. No. 2.) Not only must the taxpayer meet the business test, he must substantially prove by evidence or records the deductions claimed under the law, otherwise, the same will be disallowed. The mere allegation of the taxpayer that an item of expense is ordinary and necessary does not justify its deduction. (Basilan Estates, Inc. vs. Commissioner of Internal Revenue, September 5, 1967, 21 SCRA 17; Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, L-26911 and Commissioner of Internal Revenue vs. Atlas Consolidated Mining & Development Corporation, L-26924, January 27, 1981, 102 SCRA 246.) And assuming that the expenditure is ordinary and necessary in the operation of the taxpayer's business, the answer to the question as to whether the expenditure is an allowable deduction as a business expense must be determined from the nature of the expenditure itself, which in turn depends on the extent and permanency of the work accomplished by the expenditure. (Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, *supra.*)

The Court recognizes that an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the part of the taxpayer. (Interstate Transit Lines vs. Commissioner, 319 U.S. 590, 593, 63 S.Ct. 1279.) As a matter of fact, the taxpayer seeking a deduction must point to some specific provisions of the statute in which that deduction is authorized, and must be able to prove that he is entitled to the deduction which the law allows. (1955 PH Fed. Tax Course, Par. 1801, cited in Umali, Roman, Reviewer in Taxation, 1985 ed., p. 106.) The applicable principles of law are clear and to our mind, petitioner Industrial Textiles Manufacturing Corporation of the Philippines, Inc., has not sufficiently sustained, the burden which is placed upon it to be entitled to the claimed deduction of P71,501.68 as share in salaries, ANSCOR.

Prescription

On the question of prescription, suffice it to state that the records of the Bureau of Internal Revenue bearing on the case disclose, as pointed out by respondent, that on June 17, 1983, a waiver of the statute of limitations was executed by petitioner in this case to expire on December 30, 1984. (p. 250, BIR records.) Since the revised assessment of P65,554.15 under review was made on March 19, 1984, it is clear beyond doubt that said assessment was issued within the period executed and agreed upon by petitioner. The running of the period of limitation upon assessment and collection is suspended by waiver of the taxpayer, the right to the defense of prescription being waivable. (Sambrano vs. Court of Tax Appeals, 101 Phil. 1.)

Conclusion

Accordingly, petitioner Industrial Textiles Manufacturing Corporation of the Philippines, Inc., is ordered to pay to respondent Commissioner of Internal Revenue the amount of P65,554.15 as deficiency income tax for the year 1974, plus surcharges and interest incident to delinquency pursuant to the provisions of Section 51(e)(2)(3) of the applicable National Internal Revenue Code, as amended.

WHEREFORE, the Court hereby denies the petition for review for lack of merit and affirms the decision appealed from at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, June 10, 1988.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on official leave)
CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes

ALEX Z. REYES
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.

Amante Filler
AMANTE FILLER
Presiding Judge
Court of Tax Appeals

ANNEX "A"

I. Extrusion Mills	Date Acquired	..quisition Cost	Per BIR Examiner's Computation pp. 67-68, BIR records: Accelerated Depreciation BOI - 1974	Depreciation Claimed BOI - 1974	Overclaim 1974	Per Petitioner's Computation pp. 95-96, BIR records: Accelerated Depreciation BOI - 1974	Depreciation Claimed BOI - 1974	Overclaim 1974	Difference
1 Extrusion Line	Dec. 1967	P 349,861.09	(P 22,176.94)	P 12,322.06	P 34,499.00	(P 12,810.73)	P 11,591.89	P 25,862.96	P 8,636.04
4 Extrusion Line	June, 1969	1,144,775.88	(14,649.20)	(40,149.86)	25,530.66	(40,149.86)	(40,149.86)	-	25,530.66
Major Repairs Nylon Cams & Followers	1972-1973	164,018.31	7,398.98	22,123.64	14,724.66	25,406.58	28,404.68	(1.90)	14,726.56
Cops & Bobbins	1972-1973	59,068.20	248.32	11,565.22	11,316.90	11,506.60	11,565.22	(.38)	11,317.28
II. Beaming Section	various	1,108,773.30	See worksheet total		(374.91)	Same per BIR worksheet		(374.91)	-
III. Cops Winding Section	various	483,323.20	See worksheet total		(7,790.64)	Same per BIR worksheet		(7,790.64)	-
IV. Twisting Section	various	126,881.90	See worksheet total		-	Same per BIR worksheet		-	-
V. Weaving Mills	various	8,440,520.55	See worksheet total		(32,392.43)	Same per BIR worksheet		32,392.43	-
VI. Printing & Finishing									
1 Hayashi Printing Machine	Jan. 1969	100,995.41	(8,977.30)	8,977.30	17,954.62	Same per BIR worksheet		17,954.62	-
Other printing & finishing machines	various	371,287.03	summarized		(3,407.94)	Same per BIR worksheet Should be P3,407.94		3,605.20	-
Total overclaimed					P 60,397.71	Total underclaimed		(P 10.06)	