REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WILFREDO L. CARESOSA,
Petitioner,

- versus - C.T.A. CASE NO. 3713

BUREAU OF INTERNAL REVENUE AND CESAR M. VALDEZ, IN HIS CAPACITY AS BIR REGIONAL DIRECTOR, REVENUE REGIONAL OFFICE NO. 7, CEBU CITY,
Respondent.
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1/25/85

D E C I S I O N

This appeal involves the income tax of petitioner Wilfredo L. Caresosa for the year 1980. The basic question is whether petitioner is entitled to deduct from gross income his (1) claimed expenses of gasoline and repair of his personal jeep; and (2) loss of jeep tires, tire rims and one pair of shoes, which were disallowed by respondent Commissioner of Internal Revenue resulting, as a consequence thereof, in the issuance of an assessment dated March 31, 1982 in the amount of ₱1,090.86 as deficiency income tax for 1980, inclusive of interest. Petitioner now seeks a reversal of respondent's decision dated October 25, 1983 denying petitioner's request for reconsideration of the assessment.

The facts are not disputed. After the issues were joined with the filing of respondent's answer to petitioner's petition for review, the parties, without presenting evidence to prove or support their respective allegations, submitted the case for decision on the basis of their pleadings and the records of the Bureau of Internal Revenue of the case after filing their memorandums. As borne out by the pleadings and summarized by respondent:

> Petitioner is the municipal mayor of Loon, Bohol. For taxable year 1980, he filed an itemized income tax return declaring five (5) deductible expenses (p. 3, BIR rec.),
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> When the return was audited by respondent's examiner, two of petitioner's claimed expenses, namely:
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> | 1. | Loss of jeep tires, tire rims and one pair of shoes . . | ₱1,230.00 |
> | 2. | Gasoline and repair of jeep - personal . . . . | 4,055.64 |
> | | T O T A L . . . . | ₱5,255.64 |
> | | (p. 4, BIR rec.) | vvvvvvvvv |
>
> were disallowed because petitioner was not entitled to these deductions. Disallowance of the expenses resulted in the issuance of subject assessment dated March 31, 1982 (p. 5, BIR rec.) in the amount of ₱1,096.86 representing deficiency income tax for 1980, inclusive of interest.
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> In a letter dated April 26, 1982 (pp. 7-9, BIR rec.), petitioner requested for reconsideration of the assessment. His request was denied by respondent's office in Cebu City in a letter dated September 17, 1982 (p. 12, BIR rec.).
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> Petitioner reiterated his request for reconsideration in two separate letters, dated October 7, 1982 (pp. 13-14, BIR rec.) and June 14, 1983 (pp. 22-23, BIR rec.), stating the same grounds mentioned in his previous protest. The requests were again denied by respondent

in a letter dated October 25, 1983 (p. 49, BIR rec.). Petitioner filed a notice of appeal with this Honorable Court alleging that he received respondent's final decision only on November 7, 1983.

Parties submitted the case based on the pleadings and records of the case.

Invoking Section 319-A of the 1977 National Internal Revenue Code as inserted by Presidential Decree No. 1773, respondent in his memorandum dated October 3, 1984 raises lack of jurisdiction of this Court over the case on the ground that the petition for review was mailed on December 7, 1983 beyond the 30-day reglementary period for appeal. To quote Section 319-A of the Tax Code:

> "SEC. 319-A. Protesting of assessment. - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.

> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable."

Respondent contends that the decision appealable to this Court is his letter dated September 17, 1982, denying petitioner's request for reinvestigation, which, under the law, is deemed to have been received by petitioner on or about September 22, 1982. The request of petitioner for further investigation per his letters dated October 7, 1982 and June 14, 1983 were merely pro forma, there being no new grounds advanced. They did not therefore interrupt the period to appeal to this Court.

Pursuant to Section 11 of Republic Act No. 1125, petitioner had thirty (30) days from receipt of the denial of his request for reinvestigation to appeal to the Court of Tax Appeals. Since petitioner is deemed to have received respondent's decision on or about September 22, 1982, and the records show that the petition for review was mailed on December 7, 1983, beyond the 30-day reglementary period for appeal, respondent now submits that this Court has no jurisdiction to entertain the case.

We hold that the petition for review was filed on time. The reviewable decision is that contained in the letter dated October 25, 1983 of Regional Director Cesar M. Valdez to petitioner which explicitly states that: "Accordingly, you may appeal the said decision to the Court of Tax Appeals in accordance with the provisions of Republic Act No. 1125." (p. 49, BIR records.)

No amount of quibbling or sophistry can blink the fact that said letter, as its tenor shows, embodies the respondent's final decision within the meaning of Section 7 of Republic Act No. 1125. Respondent said so. He even directed the taxpayer to appeal it to the Court of Tax Appeals in accordance with the provisions of Republic Act No. 1125. That was the same situation in St. Stephen's Association and St. Stephen's Chinese Girl's School vs. Collector of Internal Revenue, 104 Phil. 314, 317-318. (Advertising Associates, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 59758, Dec. 26, 1984.)

The directive is in consonance with t he Supreme Court's dictum that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment. That procedure is demanded by the pressing need for fair play, regularity and orderliness in administrative action. (Surigao Electric Co., Inc. vs. Court of Tax Appeals, L-25289, June 28, 1974, 57 SCRA 523; Advertising Associates, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. L-59758, Dec. 26, 1984.)

On the merits of the case, we note, as stated in the special and affirmative defenses of respondent in his answer to petitioner's petition for review, that deductions for losses in the amount of ₱1,230.00 and expenses for gasoline and repairs of jeep in the sum of ₱4,055.64, were disallowed because petitioner failed to comply with the requirements for their deductibility. To quote the special and affirmative defenses of respondent:

SPECIAL AND AFFIRMATIVE DEFENSES

> 4. Disallowed deductions were the bases for the assessment of deficiency income tax for the year 1980 in the amount of ₱1,096.86;
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> 5. Deductions are a matter of legislative grace. They are allowed only where there is a clear provision in the statute for the deduction claimed. And the taxpayer must be able to prove that he is entitlted to the deduction;
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> 6. Deductions for losses in the amount of ₱1,230.00 and expenses for gasoline and repairs of jeep in the amount of ₱4,055.64, were disallowed because petitioner failed to comply with requirements for their deductibility;

7. For the expense deduction to be allowed petitioner must show that the expense is: (a) ordinary and necessary; (b) incurred during the taxable year in carrying on trade or business and (c) duly supported;

8. Losses, to be allowed as deduction, must be shown that: (a) the loss was that of the taxpayer; (b) that it was sustained during the taxable year; (c) evidenced by a close transaction; (d) not compensated for by insurance or otherwise, and (e) in case of casualty loss, the same was reported not less than 30 days nor more than 90 days from date of loss by casualty, robbery, theft or embezzlement;

9. Expenses for repair are deductible when shown that (a) such repairs are made to keep the property used in business in an ordinarily efficient operating condition; and they do not materially add to the value of the property nor appreciably prolong its life;

10. The assessment against petitioner was made in accordance with law and regulations; and

11. All presumptions are in favor of the correctness of tax assessments (Interprovincial Autobus Co., Inc. vs. Comm. of Int. Rev., G.R. No. L-6741, Jan. 31, 1959, 98 Phil. 290; Comm. of Int. Rev. vs. Avelino, G.R. No. L-17715, July 31, 1963, 8 SCRA 572; Mindanao Bus Co. vs. Comm. of Int. Rev., G.R. No. L-14078, Feb. 24, 1961, 1 SCRA 538).

The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision 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. The law allowing expenses as deduction from gross income for purposes of the income tax is Section 30(a)(1) of the National Internal Revenue Code which allows a deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." An item of expenditure, in order to be deductible under this section of the statute, must fall squarely within the language. (Atlas Consolidated Mining Corp. vs. Commissioner of Internal Revenue, L-26911 and Commissioner of Internal Revenue vs. Atlas Consolidated Mining Corp., L-26924, Jan. 27, 1981, 102 SCRA 24~~5~~6.)

We come, then, to the statutory test of deductibility of the expenses for gasoline and repairs of personal jeep in the amount of ₱4,055.64, where it is axiomatic that to be deductible as a business expense, three (3) conditions are imposed, namely: (1) the expense must be ordinary and necessary, (2) it must be paid or incurred within the taxable year, and (3) it must be paid or incurred in carrying on a trade or business. (Collector of Internal Revenue vs. Philippine Education Co., May 30, 1956, 99 Phil. 319.) In addition, 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 bare statement of a taxpayer that an item of expense is ordinary and necessary, unaccompanied by adequate evidence, has no weight with the Commissioner or with the courts. (De Vera vs. Collector, CTA Case No. 164, March 23, 1959; Basilan Estates, Inc. vs. Commissioner of Internal Revenue, September 5, 1957, 21 SCRA 17; Atlas Consolidated Mining Corp. vs. Commissioner of Internal Revenue, L-26911, and Commissioner of Internal Revenue vs. Atlas Consolidated Mining Corp. L-26924, Jan. 24, 1981, 102 SCRA 245.) As required by Section 66, Revenue Regulations No. 2, any claim for deduction must be substantiated by record showing in detail the amount and nature of the expenses incurred.

Here, in the case at bar, except the bare statement of petitioner in his letters to the Bureau of Internal Revenue and memorandum dated July 11, 1984 that as municipal mayor of a town, the expenses incident to the exercise of his functions as such are ordinary and necessary, and incurred in "carrying on a trade or business", no evidence whatsoever was adduced by him to prove or support this allegation. Then, as previously adverted to, the law requires that the expense to be deductible must be paid or incurred during the taxable year but no proof of payment was presented by petitioner to this effect.

It is hardly necessary to add 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 Auto-bus 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.//

Again, petitioner alleges that ₱4,055.64 was spent for gasoline and repairs of his jeep but no evidence was presented as to what portion was spent for gasoline and the portion corresponding to repairs. It is true that the cost of incidental repairs which neither materially add to the value of the property nor appreciably prolong its life but keep it in an ordinarily efficient operating condition may be deducted as expense provided the property account is not increased by the amount of such expenditure. But it is well to note that repairs in the nature of replacement to the extent that they arrest deterioration and appreciably prolong the life of the property should be charged against the depreciation reserve if such account is kept. (Secs. 68 & 120, Rev. Regs. No. 2; Gancayco vs. Collector of Internal Revenue, L-13325, April 20, 1961, 1 SCRA 980; Brinker vs. Collector of Internal Revenue, CTA No. 366, July 17, 1959.) Consequently, how can the Court possibly determine the exact cost of repairs and its deductibility without competent evidence presented by petitioner to this effect? Respondent's disallowance of petitioner's claimed expense of ₱4,055.64 representing alleged gasoline and repairs of jeep should therefore be sustained.

Anent petitioner's claimed deduction for losses of jeep tires, tire rims and one pair of shoes in the amount of ₱1,230.00 which respondent disallowed because of the failure of petitioner to prove that he is entitled to the deduction and to comply with the requirements for their deductibility, respondent's ruling should also be sustained. Just like petitioner's claimed expenses for gasoline and repairs of jeep, absolutely no evidence was adduced by petitioner to prove or support these losses. As contended by respondent, losses, to be allowed as deduction, must be shown that: (a) the loss was that of the taxpayer; (b) that it was actually sustained during the taxable year; (c) the loss must be evidenced by a closed and completed transaction; (d) the loss must not have been compensated for by insurance or otherwise; and (e) in case of casualty loss, the same must be reported not less than 30 days nor more than 90 days from the date of the loss by casualty, robbery, theft or embezzlement. (Sec. 30 (d)(1)(c), National Internal Revenue Code.) No evidence whatsoever was presented by petitioner to the effect that the aforesaid requirements for the deductibility of his claimed losses have been complied with. And with more reason that petitioner should prove that he is entitled to the deduction of his losses because it is subject to the qualification that losses, to be deductible, must be evidenced by a closed and completed transaction.

Accordingly, the Court finds petitioner Wilfredo L. Caresosa liable to the payment of the amount of ₱1,096.86 as deficiency income tax for the year 1980, plus 10% surcharge and 20% annual interest from March 31, 1982 until fully paid pursuant to Section 51(e) of the 1977 National Internal Revenue Code, as amended by Presidential Decree No. 1705, provided that the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three (3) years.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, January 25, 1985.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge