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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS

EMILIO G. VITO,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

C.T.A.
CASE NO. 1186

April 30/66

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

D E C I S I O N

This is a petition to review the decision of respondent dated February 14, 1962 requiring petitioner to pay the sums of ₱773.40 and ₱501.95, as deficiency income tax for the years 1957 and 1958, respectively.

Petitioner, the assistant general manager of Marsman & Co., Inc. and Palawan Consolidated Mining Co., Inc., filed in due time his income tax returns for the years 1957 and 1958 (pp. 4 & 7, BIR rec.). In said returns, petitioner claimed as deductions, among others, the amounts of ₱2,400.00 as representation expenses for 1957 (p. 7, BIR rec.) and ₱1,450.00 as loss for 1958 (p. 4, BIR rec.). On or about January 15, 1962, when petitioner applied for a tax clearance certificate required for his trip abroad, respondent assessed against him a deficiency tax in the sums of ₱773.40 and ₱249.95 for the years in question. Petitioner asked for the details which gave rise to the said assessment and at the same time asked for its reconsideration (p. 14, BIR rec.). In reply thereto, respondent, on February 14, 1962, rendered his decision denying the request for reconsideration and instead assessed and demanded from petitioner deficiency income tax in the amount of ₱773.40 for 1957 and ₱501.-95 for 1958, computed as follows:

1957

"A-34757-57

Net income per return	₱ 13,627.91
Add: Representation expenses . . .	2,400.00
Net income per audit	₱ 16,027.91
Less: Personal & additional exemption	3,600.00
Amount subject to tax	₱ 12,427.91
Income tax due thereon	1,293.00
Less: Tax Credit	519.60
Amount still due and collectible .	₱ 773.40

1958

90-A-40464-58

Net income per return	₱ 13,820.00
Add: Loss of household belongings .	1,450.00
Net income per audit	₱ 15,270.00
Less: Personal & additional exemption	3,600.00
Amount subject to tax	₱ 11,670.00
Income tax due thereon	₱ 1,164.00
Less: Tax Credit	662.05
Amount still due and collectible .	₱ 501.95"

(Pp. 16-17, BIR rec.; p. 7, CTA rec.)

The issues raised are:

1. Whether or not petitioner may deduct from his gross income for the year 1957 the sum of ₱2,400.00 allegedly as representation expenses; and

2. Whether or not petitioner's claim for loss in the amount of ₱1,450.00 is deductible from his gross income for the year 1958.

Respondent disallowed the amount of ₱2,400.00 claimed as representation expenses on the ground that petitioner did not receive any allowance for representation expenses in 1957. Also, respondent contends that assuming petitioner actually received the sum of ₱2,400.00 as representation expenses, still the same is not deductible because he failed to prove how they were spent.

The only witness to testify for petitioner was Emilio G. Vito, the petitioner himself, who declared that he received a fixed salary of ₱7,200.00 a year from Palawan Consolidated Mining Co., Inc. in 1957 (pp. 3-4, 14-16, t.s.n.) as its Assistant General Manager and one of the senior members of the technical staff (pp. 3-4, 7-8, 14-16, t.s.n.); that for the same year, he also received a salary of ₱7,200.00 from Marsman & Co., Inc. (which manages the Palawan Consolidated Mining Co., Inc.) also as Assistant General Manager; and that his salary of ₱7,200.00 from Marsman & Co., Inc., as reported in his income tax return, includes his allowance of ₱2,400.00 a year or ₱200.00 a month for representation expenses (pp. 14-16, t.s.n.).

We agree with respondent that petitioner did not receive an allowance for representation expenses in 1957. Petitioner's income tax return for 1957 shows that he received the salaries of ₱7,200.00 a year from Palawan Consolidated Mining Co., Inc. and ₱7,200.00 a year from Marsman & Co., Inc. It is alleged by petitioner that his allowance for representation expenses amounting to ₱2,400.00, which he received from Marsman & Co., Inc., is included in the reported income of ₱7,200.00. If petitioner actually received such allowance, he should have reported it as part of his gross income in order that he can deduct it (Sec. 66(b), Rev. Regs. Nos. 2; 1955 P-H Federal Taxes, par. 11, 300; Schmidlapp v. Comm., 96 F(2d) 680, cited in Arañas, Anno. & Jurisp. on the National Internal Revenue Code, Vol. I, p. 237, 1963 Ed.), but the return does not indicate petitioner's receipt of such allowance (p. 7, BIR rec.). Petitioner's uncorroborated testimony that the amount of ₱2,400.00 forms part of the ₱7,200.00 he received as salary from Marsman & Co., Inc. is unconvincing and self-serving.

We now come to the second issue. Respondent's sole basis for the disallowance of the sum of ₱1,450.00 is the alleged failure of petitioner "to prove that the articles in question were actually stolen from him" (pp. 11 & 51, CTA rec.). We cannot subscribe to this view of respondent. Sometime in October, 1958, some of petitioner's household belongings and appliances were stolen from his residence. An information for robbery was filed against the accused (Exh. "A-1", p. 39, CTA rec.), who pleaded guilty to the lesser offense of theft and was convicted thereof. Although the court ordered the accused to indemnify petitioner for the value of the stolen properties (Exh. "A-2", p. 40, CTA rec.), petitioner was never paid by the accused nor by anybody (p. 6, t.s.n.). The information contained an itemization of the property stolen which had an aggregate value of ₱919.00. However, petitioner reported in his income tax return as loss resulting from the robbery the amount of ₱1,450.00 or a difference of ₱531.00. He alleges that the discrepancy between the value of the stolen property reported in the tax return and the value thereof stated in the information is due to the list and valuation given by his wife to the police which were not correct (pp. 16-17, t.s.n.). The evidence of record is clear that petitioner actually suffered loss from the robbery in 1958 (Exhs. "A-1" & "A-2", <u>supra</u>). It is a mistake for respondent to disallow the entire sum of ₱1,450.00. Petitioner should be allowed a loss deduction of ₱919.00, which we consider to be the correct value of the articles stolen (Exh. "A-1", <u>supra</u>). We believe that the list and valuation given to the police by petitioner's wife deserves more credit because they were made soon after the commission of the crime than the ones made by petitioner which were made only when he filed his income tax return. Furthermore, considering that the stolen property consisted of household belongings and appliances, we believe that petitioner's wife is in a better position to know their value. Besides, the information contains an inventory of the stolen property, whereas the claimed stolen property was described in the tax return as "household belongings, etc."

In view of the foregoing, petitioner is liable for deficiency income tax in the sum of ₱447.95 for the year 1958, computed as follows:

Net income per return	₱ 13,820.00
Add: Loss of household belongings . . .	531.00
Net income	₱ 14,351.00
Less: Personal & additional exemption ..	3,000.00
Amount subject to tax	₱ 11,351.00
Income tax due	₱ 1,110.00
Less: Tax Credit	662.05
Amount still due :	₱ 447.95

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WHEREFORE, the deficiency assessment appealed from is hereby modified. Petitioner is ordered to pay respondent the sums of ₱773.40 and ₱447.95 as deficiency income tax for the years 1957 and 1958, respectively, plus the corresponding interest provided in Section 51 of the Revenue Code. If the deficiency tax is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall, in addition, pay the surcharge of five per cent (5%) of the unpaid amount. Without pronouncement as to costs.

SO ORDERED.

Quezon City, April 30, 1966.

R M Umali
ROMAN M. UMALI
Acting Presiding Judge

I CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge