

TAN GUAN, PETITIONER, VS. THE COURT OF TAX APPEALS AND THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-23676. April 27, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

In 1947 Tan Guan and Sia Lin, Chinese nationals, organized and registered the Philippine Surplus Company, a general partnership. For the same year the partners and the partnership filed separate income tax returns. Tan Guan, who filed his return on April 18, 1949, reported a net income of P20,987.14 and paid P2,577.81 as income tax thereon. The partnership paid no income tax.

A registered general partnership is exempt from income tax[1] although it is required to file an income tax return.[2] Profits, whether or not distributed, are considered income of the partners.[3]

Acting upon a confidential report that the Philippine Surplus Company posted in its books fictitious expenses for the purpose of avoiding taxes, the Bureau of Internal Revenue investigated in 1954 the books and papers of said partnership and disallowed the following ex-pense deductions for the year 1948 for being fictitious:

1. D.V. Balsicas, Dec. 7, 1948

services rendered in over-

hauling and putting into running

condition eight big steam

hoists at P3,500.00 each P28,000.00

Three smaller steam

hoists at P2,800.00 each 8,400.00 P36,400.00

2. Service of engine

104,470.00

3. Gonzalo Padua, freight

66,000.00

Total disallowed -----

P206,870.00

The BIR investigators discovered that the expenses were not supported by receipts; that the names of the payees

in the aforesaid entries were erased; and that the said payees did not report the sums in question in their in-come tax returns for 1948.

Treating the disallowed sum as income of the individual partners, the Bureau of Internal Revenue assessed on January 2, 1956 the following deficiency income tax against Tan Guan:

Net income per return	
P20,987.14	
Add: Undeclared profit	
from Phil. Surplus Co.	
103,435.00	
Net income per investigation	
P124,422.14	
Less: Personal exemption	
1,000.00	
Taxable income	
123,422.14	
Income tax due thereon	
36,548.86	
Less: Tax paid	
2,577.81	
Deficiency tax	
33,971.05	
Add: 50% surcharge	
16,985.52	
Total amount due-----	
P50,956.57	

This assessment could not be served on Tan Guan inasmuch as he could not be located.

On June 6, 1960 the Bureau of Internal Revenue wrote a letter to Tan Guan, c/o Atty. Constantino P. Tadeña, demanding payment of the sum of P50,956.57 as well as 5% surcharge for late payment, 1% monthly interest computed from January 26, 1957, and P50.00 administrative penalty. This letter was received by Atty. Tadeña on June 28, 1960.

On July 8, 1960 Tan Guan appealed to the Court of Tax Appeals which in turn affirmed the assessment of the Commissioner of Internal Revenue. His motion for reconsideration having been denied by the Court of Tax

Appeals, Tan Guan appealed to this Court.

The issues are:

1. Has the right of the Commissioner of Internal Revenue to assess the deficiency tax in question prescribed?
2. Should the deduction in the amount of P206,870.00 claimed by the Philippine Surplus Co. as a business expense be allowed?

Tan Guan maintains that inasmuch as the deficiency assessment was issued only on January 2, 1957, the right of the Commissioner of Internal Revenue had prescribed, the same having been exercised after the lapse of the five-year period provided for in Section 331 of the Tax Code counted from the filing of his return on April 18, 1949. On the other hand, the Commissioner of Internal Revenue contends that Tan Guan's return was false and fraudulent, hence the Commissioner had ten years counted from the discovery of the falsity or fraud on August 10, 1954 within which to make a deficiency assessment pursuant to Section 332(a) of the Tax Code; and that since the assessment was issued on January 8, 1957, the same was timely made.

Obviously, the resolution of the question on whether or not the right of the Commissioner of Internal Revenue to assess the deficiency tax prescribed would depend on whether or not the income tax return of Tan Guan for 1948 was false or fraudulent. If so, the Commissioner's right has not prescribed. If not, the assessment issued is void because of prescription.

The Commissioner's bases in concluding that Tan Guan's income tax return was false or fraudulent are the findings of his agents that the Philippine Surplus Co. claimed deductions of fictitious expenses for the purpose of avoiding the declaration of profits which eventually would be taxable as income of Tan Guan and Sia Lin, and that the names of the payees in the corresponding entries of the expenses involved in the books of accounts were erased.

The Commissioner's finding on the facts constituting fraud, proved in, and found established by, the Court of Tax Appeals, was not rebutted by the taxpayer. Hence, We are not inclined to disturb the finding of falsity or fraudulence in Tan Guan's return.

The returns being false or fraudulent, the Commissioner of Internal Revenue has not lost his right to issue the assessment on January 8, 1957.

With respect to Tan Guan's contention that he should be given the same treatment as Sia Lin, who was absolved by the Commissioner of Internal Revenue from paying deficiency income tax on the other half of the sum of P206,870.00, suffice it to say that the Government is not bound by the errors committed by its agents in previous investigations and assessments.[4]

We come now to the question of deductibility of the sum of P206,870.00 as business expenses of the Philippine Surplus Co. for 1948. The only reason why said deduction was disallowed is because the expenses were fictitious or non-existent. Said conclusion was prompted by the absence of supporting receipts in the voucher covering the expenses and by the failure of the recipients thereof to declare them in their income tax returns. Tan Guan however contends that said supporting receipts could not be produced, for the assessment took place beyond the period during which he was duty bound under Section 337 of the Tax Code to keep and preserve them, that is, allegedly more than five years from the filing of his income tax return. This explanation for the absence of supporting receipts cannot be accepted. The records show that the investigation of Tan Guan's liability was made in 1954, prior to the expiration of the five-year period set forth in Section 337 of the Tax Code.

The Commissioner of Internal Revenue, sustained by the Tax Court, found as a fact that the expenses in the

amount of P206,870.00 are fictitious. Tan Guan presented no evidence to disprove such finding. In appeals to the Court of Tax Appeals, the determination of the Commissioner of Internal Revenue is presumed correct and it behooves the taxpayer to rebut such presumption.[5] Tan Guan failed to overcome his burden. Hence, the finding that the expenses are fictitious must be sustained. And being fictitious, the expenses cannot be claimed as deduction from gross income.

WHEREFORE, the decision appealed from is affirmed. With costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Section 24, Tax Code.

[2] Section 49, Id.

[3] Section 26, Id.

[4] Phil-American Drug Co. v. Collector of Internal Revenue, L-13032, August 31, 1959.

[5] Perez v. Court of Tax Appeals, et al., L-10507, May 30, 1958; Collector of Internal Revenue v. Bohol Land Transportation Co., L-13099, L-13462, April 29, 1960.

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