

ALHAMBRA CIGAR & CIGARETTE MANUFACTURING COMPANY, PETITIONER-APPELLANT, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE.*G.R. No. L-23226. November 28, 1967*

Ponente: FERNANDO, J.

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This Court, in this petition for the review of a decision of the Court of Tax Appeals is not faced with a problem of undue complexity. The law governing the matter has been authoritatively expounded in an opinion by the then Justice, now Chief Justice, Concepcion in *Alhambra Cigar v. Collector of Internal Revenue*,^[1] a case involving the same parties over a similar question but covering an earlier period of time. The limits of a power of respondent Commissioner of Internal Revenue to allow deductions from the gross income "the ordinary and necessary expenses paid or increased during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries and other compensation for personal services actually rendered * * *"^[2] had thus been authoritatively expounded. What remains to be decided in this litigation is whether the decision of the Court of Tax Appeals sought to be reviewed reflected with fidelity the doctrine thus announced or deviated therefrom.

According to the petition for review, *Alhambra Cigar & Cigarette Manufacturing Company*, petitioner-appellant, "is a corporation duly organized and existing under the laws of the Philippines, with principal office at 31 Tayuman street, Tondo, Manila; and the respondent-appellee is the duly appointed and qualified Commissioner of Internal Revenue, vested with authority to act as such for the Government of the Republic of the Philippines, * * *."^[3]

In the petition for review it was contended that the Court of Tax Appeals, in affirming the action taken by respondent-appellee Commissioner of Internal Revenue, erred "(a) In holding that A. P. Kuenzle and H. A. Streiff, who were the President and Vice-President, respectively, of the petitioner-appellant, were entitled to a salary of only P6,000.00 each a year, for 1954, 1955, 1956 and 1957, and a bonus equal to the reduced bonus of W. Eggmann for each of said years; and disallowing as deductions the portions of their salary and bonus in excess of said amounts; (b) In disallowing, as de-uctions, all the directors' fees and commissions paid by the petitioner-appellant to A. P. Kuenzle and H. A. Streiff; (c) In holding that the petitioner-appellant is liable for the alleged deficiency income taxes in question."^[4]

It is indisputable as noted in the brief for petitioner-appellant that the deductions disallowed by respondent-appellee, Commissioner of Internal Revenue, for the years 1954 to 1957 designated as salaries, officers; bonus, officers; commissions to managers and directors' fees "relate exclusively to the compensations paid by the petitioner-appellant in 1954, 1955, 1956 and 1957, to A. P. Kuenzle and H. A. Streiff who were, during the said years, as they had been in prior years and still are, directors and the president and vice-president, respectively, of the petitioner-appellant * * *."^[5]

Under the category of salaries, officers of the fixed annual compensation of A. P. Kuenzle and H. A. Streiff, in the amount of P15,000.00 each, "the respondent-appellee allowed for each of them a salary of only P6,000.00 and disallowed the balance of P9,000.00, or a total disallowance of P18,000.00 for both of them, for each of the years in question." [6] Under that of bonus, officers of the amount under such category paid to the above gentlemen for the year 1954 of P14,750.00 each, "the respondent-appellee allowed each of them a bonus of only P5,850.00, and disallowed the balance of P8,900.00 or a total disallowance of P17,800.00 for both of them." [7] For the year 1955, the bonus being paid, once again, amounting to P14,750.00 to each of them, "the respondent-appellee allowed for each of them a bonus of only P7,000.00, and disallowed the balance of P7,750.00 each, or a total disallowance of P15,500.00 for both of them." [8] For the year 1956, again the amount, not suffering any change for each, "the respondent-appellee allowed for each of them a bonus of only P5,500.00 and disallowed the balance of P9,250.00 each, or a total disallowance of P18,500.00 for both of them." [9] Lastly, for the year 1957, of a similar amount payable to each in the concept of bonus, "the respondent-appellee allowed for each of them a bonus of only P6,500.00, and disallowed the balance of P8,250.00 each, or a total disallowance of P16,500.00 for both of them." [10]

As to the deduction in the concept of commissions to managers, the brief for the petitioner appellant states: "The commissions paid by the petitioner-appellant to A. P. Kuenzle and H. A. Streiff, in the amount of P13,607.61 each in 1954, or a total of P27,215.22 for both of them; P14,097.62 each in 1955, or a total of P28,195.24 for both of them; P13,180.87 each in 1956, or a total of P26,361.74 for both of them; and P13,144.29 each in 1957, or a total of P26,288.48 for both of them, were entirely disallowed by the respondent-appellee." [11]

Concerning the directors' fees paid to both officials by petitioner-appellant, it is noted in the brief that "in the amount of P11,504.71 each in 1954, or a total of P23,009.42 for both of them; P10,693.02 each in 1955, or a total of P21,386.04 for both of them; P10,360.23 each in 1956, or a total of P20,720.46 for both of them; and P9,716.63 each in 1957, or a total of P19,433.26 for both of them were also entirely disallowed by the respondent-appellee." [12]

In the decision of the respondent Court of Tax Appeals sought to be reviewed, there was an appraisal of the evidence on which respondent-appellee Commissioner of Internal Revenue based the above deductions on salaries and bonuses: "The evidence shows that prior to 1954, Messrs. A. P. Kuenzle and H. A. Streiff, President and Vice-President, respectively, of petitioner corporation, were each paid an annual salary P6,000.00 and a bonus of about four times as much as the annual salary. In *Alhambra Cigar and Cigarette Manufacturing Company v. Coll. of Int. Rev.*, C.T.A. No. 143, January 31, 1957 (affd. in G.R. Nos. L-12026 & L-12131, May 29, 1959), this Court held that considering the nature of the services performed by Messrs. Kuenzle and Streiff, the salary of P6,000.00 paid to each of them were reasonable and, therefore, deduction is ordinary and necessary business expense. The bonus paid to each of said officers was however reduced to the amount equivalent to that paid to Mr. W. Eggmann, the resident Treasurer and Manager of petitioner. Following the decision of the Supreme Court in G.R. Nos. L-12026 & L-12131, * * *, respondent allowed as deduction P6,000.00 as salary to Messrs. Kuenzle and Streiff and a bonus equivalent to that paid annually to Mr. Eggmann from 1954 to 1957, as indicated above." [13]

Then the decision of respondent Court of Tax Appeals in affirming what respondent-appellee did explained why: "Upon the evidence of record, we find no justification to reverse or modify the decision of respondent with respect to the disallowance of a portion of the salaries and bonuses paid to Messrs. Kuenzle and Streiff. Petitioner seeks to justify the increase in the salaries of Messrs. Kuenzle and Streiff on the ground of increased costs of living. The said officers of petitioner are, however, non-residents of the Philippines." [14]

It may be stated in this connection that the brief for petitioner-appellant did not actually dispute the fact of non-residence of the aforesaid officials. Thus: "A. P. Kuenzle or H. A. Streiff usually came to the Philippines

every two years, and generally stayed from five to eight weeks (t.s.n., pp. 203-204). During the years in question, H. A. Streiff was in the Philippines from January 27 to March 20, 1954. He was personally present at the special meeting of the board of directors of the petitioner-appellant on February 19, 1954 and at the regular meeting on February 27, 1954, the minutes of all of which he signed as Vice-President (Exhibits Q, Q-1 and Q-2). He was also personally present at the semi-annual meeting of stockholders of the petitioner-appellant on February 19, 1954, the minutes of which he also signed as vice-president (Exh. R). A. P. Kuenzle was in the Philippines from February 3 to March 8, 1956 (t.s.n., pp. 204-205). He was personally present at the special meeting of the board of directors on February 22, and on February 23, 1956, and at the semi-annual general meeting of stockholders on February 23, 1956, the minutes of all of which he signed as President (Exhs. Q-8, Q-9, and R-4). H. A. Streiff came again to the Philippines in 1958, and he personally attended the special meeting of the board of directors on March 7, 1958, the minutes of which he also signed as Vice-President (Exh. Q-16)." [15]

There was in the brief of petitioner-appellant stress laid on those work, performed by them, both in and outside the Philippines. "During their stay in the Philippines, A. P. Kuenzle or H. A. Streiff inspected the installations of the petitioner-appellant, and discussed with the local management, personnel and management matters, long-range planning and policies of the company (t.s.n., pp. 205-206). Aside from these visits of A. P. Kuenzle and H. A. Streiff to the Philippines, there were other personal consultations between them and the local management. There were about seven staffmembers in the local management, and each of them went on home leave every four years and for consultations in Switzerland with the general managers, A. P. Kuenzle and H. A. Streiff. These home leaves each lasted for six months. In this way, at least one staffmember went on home leave every year and for consultations with the general managers. * * *"[16]

As to commissions and directors' fees, it is the finding of the Court of Tax Appeals: "In connection with the commissions paid to Messrs. Kuenzle and Streiff, there is no evidence of any particular service rendered by them to petitioner to warrant payment of commissions. Counsel for petitioner sought to prove the various types of services performed by said officers, but the services mentioned are those for which they have been more than adequately compensated in the form of salaries and bonuses. As regards the directors' fees, it is admitted that Messrs. Kuenzle and Streiff 'usually came to the Philippines every two years, and generally stayed from five to eight weeks.' (Page 17, Memorandum for Petitioner.) We cannot see any justification for the payment of director's fees of about P10,000.00 to each of said officers for coming to the Philippines to visit their corporation once in two years. Being non-resident President and Vice President of Petitioner corporation of which they are the controlling stockholders, we are more inclined to believe that said commissions and directors' fees, payment of which was based on a certain percentage of the annual profits of petitioner, are in the nature of dividend distributions." [17]

Considering how carefully the Court of Tax Appeals considered the matter of the disallowances in the light of Section 30 of the National Internal Revenue Code, the task for petitioner-appellant in proving that it erred in holding that A. P. Kuenzle and H. A. Streiff were entitled only to the salary of P6,000.00 each a year, for 1954, 1955, 1956 and 1957, and a bonus equal to the reduced bonus of one of its officials, a certain W. Eggmann, for each of said years, and in disallowing as deductions of the directors' fees and commissions paid by it to them, was far from easy. Nor could it be said that petitioner-appellant did succeed in such effort. As mentioned earlier, the previous case of *Alhambra Cigar & Cigarette Manufacturing Company v. The Collector of Internal Revenue*, [18] has laid down the applicable principle of law.

In the language of then Justice, now Chief Justice, Concepcion: "In the light of the tenor of the foregoing provision, whenever a controversy arises on the deductibility, for purposes of income tax, of certain items for alleged compensation of officers of the taxpayer, two (2) questions become material, namely: (a) Have 'personal

services' been actually rendered' by said officers? (b) In the affirmative case, what is the 'reasonable allowance' therefore? When the Collector of Internal Revenue disallowed the fees, bonuses and commissions aforementioned, and the company appealed therefrom, it became necessary for the [Court of Tax Appeals] to determine whether said officer had correctly applied section 30 of the Tax Code, and this, in turn, required the consideration of the two (2) questions already adverted to. In the circumstances surrounding the case, we are of the opinion that the [Court of Tax Appeals] has correctly construed and applied said provision." So it is now. This appeal too cannot prosper.

Even if there were no such previous decision, it would still follow, in the light of the controlling doctrines, that the Court of Tax Appeals must be sustained. The well written brief for petitioner-appellant citing *Botany Worsted Mills v. United States*,^[19] states: "Whether the amounts disallowed by the respondent-appellee in the respective years were reasonable compensation for personal services, is a question of fact to be determined from all the evidence."^[20] That the question thus involved is inherently factual, appears to be undeniable. This Court is bound by the finding of facts of the Court of Tax Appeals, especially so, where as here, the evidence in support thereof is more than substantial, only questions of law thus being left open to it for determination.^[21] Without ignoring the various factors which petitioner-appellant would have this Court consider in passing upon the determination made by the Court of Tax Appeals but with full recognition of the fact that the two officials were non-residents, it cannot be said that it committed the alleged errors, calling for the interposition of the corrective authority of this Court. Nor as a matter of principle is it advisable for this Court to set aside the conclusion reached by an agency such as the Court of Tax Appeals which is, by, the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless, as did not happen here, there has been an abuse or improvident exercise of its authority.

WHEREFORE, the decision of the Court of Tax Appeals is affirmed, with costs against petitioner-appellant.

Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.
Concepcion, C.J., and Reyes, J., on official leave of absence.

[1] L-12026, May 29, 1959.

[2] Section 30 (a) i, National Internal Revenue Code.

[3] Petition for Review.

[4] *Ibid*, at p. 3.

[5] Brief for the Petitioner-Appellant, p. 7.

[6] *Ibid*, at p. 9.

[7] *Ibid*, at p. 9.

[8] *Ibid*, at pp. 9-10.

[9] *Ibid*, at p. 10.

[10] *Ibid*, at p. 10.

[11] *Ibid*, at p. 10.

[12] *Ibid*, at p. 11.

[13] Appendix A, Brief for Petitioner-Appellant, pp. 73-74.

[14] Ibid, at p. 76.

[15] Brief for the Petitioner-Appellant, p. 28.

[16] Ibid, at pp. 28-29.

[17] Appendix A, Brief for Petitioner-Appellant, pp. 76-77. There was a denial in the brief of petitioner-appellant that Kuenzle and Streiff "are the controlling stockholders." Such inaccuracy, even if admitted, does not call for a reversal of the decision of the Court of Tax Appeals on this particular point.

[18] L-12026, May 29, 1959.

[19] 278 US 282 (1929).

[20] Brief for the Petitioner-Appellant, pp. 35-36.

[21] Sanchez v. Commissioner of Customs (1957) 102 Phil. 37; Castro v. Collector of Internal Revenue, L-12174, April 26, 1962; Yupangco and Sons v. Commissioner of Customs, L-22259, Jan. 19, 1966; Commissioner v. Priscila Estate Inc., L-18282, May 29, 1964; The Philippine Guaranty v. Commissioner of Internal Revenue, L-22074, Sept. 6, 1965; Republic v. Razon and Jai Alai Corp., L-14762, May 29, 1967; Balbas v. Domingo, L-19804, Oct. 23, 1967.

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