

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER VS. THE PHILIPPINE EDUCATION CO., INC., RESPONDENT.

G.R. No. L-8505. May 30, 1956

Ponente: PARAS, C.J.

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PARAS, C.J.:

There is no dispute as to the facts, since the same have been stipulated by the parties. The Philippine Education Co., Inc., respondent herein, lost all its pre-war books of accounts and records, with the exception of a copy of the trial balance sheet of November 30, 1941. The accounting firm of Dalupan, Sanchez & Co. was employed to prepare and prove respondent's war damage claim, as in fact it did so. On October 29, 1948, the War Damage Commission made the first payment of P402,273.96 to the respondent which paid to Dalupan, Sanchez & Co. the sum of P13,045.48 as the latter's stipulated fee. In the income tax return filed by the respondent for the fiscal year ending on March 31, 1949, the respondent claimed the sum of P13,045.48 as a deduction under section 30 of the National Internal Revenue Code. Disallowing said deduction, the Collector of Internal Revenue, petitioner herein, assessed against the respondent the sum of P2,405.14 as deficiency income tax on the amount of P13,045.48, including surcharge, penalty and interest, payment of which was demanded from the respondent. Refusing to acquiesce in said ruling, the respondent appealed to the Court of Tax Appeals which rendered a decision reversing the view of the petitioner and declaring the respondent exempt from the deficiency income tax in question.

The legal provision involved is section 30 of the National Internal Revenue Code which allows as deductions "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." As pointed out by the Court of Tax Appeals, three conditions are imposed: (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.

It is admitted that the sum of P13,045.13 was paid by the respondent to Dalupan, Sanchez & Co. within the fiscal year 1949. The questions to be decided are whether or not the expense in question was ordinary and necessary and whether or not it was paid or incurred in carrying on respondent's business.

It is petitioner's theory that the respondent is a corporation engaged in the purchase and sale of textbooks, magazines, office and school supplies, and a variety of other merchandise and commodities; that it was never normally and customarily engaged in filing petitions for war damage compensation; and that, therefore, the fee paid by it to the accounting firm of Dalupan, Sanchez & Co. was not incurred in the kind of business transactions in which it is normally and customarily engaged.

In our opinion, this view is too narrow and technical. To carry on its business, even as specified by the petitioner, the respondent not only must have sufficient assets but must preserve the same and recover any that should be lost. The fee in question was paid by the respondent to recover its lost assets occasioned by the war and thereby to be so rehabilitated as to be able to carry on its business. The law does not say that the expense must be for or on account of transactions in one's trade or business.

As stated in Merten's Law of Federal Income Taxation, Vol. IV, "ordinarily, an expense will be considered necessary where the expenditure is appropriate and helpful in the development of the taxpayer's business" (page 35) ; "it is sufficient that the expense were incurred for purposes proper to the conduct of the corporate affairs or for the purpose of realizing a profit or of minimizing a loss" (pp. 382-383); "the term 'ordinary' as used in these statutes does not require that the payments be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected" (p. 316) ; and "attorney's fees for services rendered in the prosecution of claim before the Mixed Claims Commission are deductible" (p. 346). There is no essential difference between attorney's fees and that paid to an accountant, as regards the benefit derived by the claimant. With particular reference to attorney's fees, the following cases were cited: Commissioner of Internal Revenue vs. Ullmann 77 F (2d) 827, 296, U.S. 631, 80 L fd. 449, 56 SCR 155 (1935), and Commissioner of Internal Revenue vs. Speyer 77 F (2d) 824, 296 U. S. 631, 80 L fd. 449, 56 SCR 1955. The petitioner observes, however, that these cases are not applicable because there is no law of the United States Federal Government exempting the proceeds of war damage claims from taxes. This observation is successfully answered by the respondent which has pointed out that the exemption provided in Republic Act No. 227 is a surplusage, because even without said statutory exemption, a war damage compensation would still not be subject to tax, not being an income. "The word 'income', as used in the sixteenth amendment, cannot be construed to include property other than income, even if such property is described as income by an act of Congress." (Brewster vs. Walch, D. C. Conn. 268 P207, 216.) "Compensation for injury to capital is never 'income/ no matter when collected." (H. Liebes & Co. vs. Commissioner of Internal Revenue, C. C. A. 9, 90 F 2nd 932.)

The petitioner also resorts to the argument that Republic Act No. 227 gives taxpayers double benefits, namely, that of deducting from the gross income the loss sustained, and that of exempting the recovered amounts from income tax; and if the fees incurred in the recovery of war damage compensation can be allowed as a deduction, it would work to the great prejudice and disadvantage of the Government. As ruled by the Court of Tax Appeals, "the questioned item represent legitimate business expense incurred in the recovery of losses and it has never been deducted by petitioner (respondent herein) as part of his war losses." And the respondent, moreover, add: "Besides, there is nothing in the stipulation of facts which suggest even vaguely that there was in this case an infringement of the double-benefit theory. On the contrary, the respondent failed to deduct in any of its income tax returns its war losses, and even the amount of its approved claim which the United States Philippine War Damage Commission did not pay for lack of appropriation." Wherefore, the appealed decision of the Court of Tax Appeals is hereby affirmed. So ordered, without costs.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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