

CONSOLIDATED MINES, INC., COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. Nos. L-18843 & L-18844. August 29, 1974

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

These are appeals from the amended decision of the Court of Tax Appeals dated August 7, 1961, in CTA Cases No. 565 and 578, both entitled "Consolidated Mines, Inc. vs. Commissioner of Internal Revenue," ordering the Consolidated Mines, Inc., hereinafter referred to as the Company, to pay the Commissioner of Internal Revenue the amounts of P79,812.93, P51,528.24 and P71,392.82 as deficiency income taxes for the years 1953, 1954 and 1956, respectively, or the total sum of P202,733.99, plus 5% surcharge and 1% monthly interest from the date of finality of the decision.

The Company, a domestic corporation engaged in mining, had filed its income tax returns for 1951, 1952, 1953 and 1956. In 1957 examiners of the Bureau of Internal Revenue investigated the income tax returns filed by the Company because on August 10, 1954, its auditor, Felipe Ollada, claimed the refund of the sum of P107,472.00 representing alleged over payments of income taxes for the year 1951. After the investigation the examiners reported that (A) for the years 1951 to 1954 (1) the Company had not accrued as an expense the share in the company profits of Benguet Consolidated Mines as operator of the Company's mines, although for income tax purposes the Company had reported income and expenses on the accrual basis; (2) depletion and depreciation expenses had been overcharged; and (3) the claims for audit and legal fees and miscellaneous expenses for 1953 and 1954 had not been properly substantiated; and that (B) for the year 1956 (I) the Company had overstated its claim for depletion; and (2) certain claims for miscellaneous expenses were not duly supported by evidence.

In view of said reports the Commissioner of Internal Revenue sent the Company a letter of demand requiring it to pay certain deficiency income taxes for the years 1951 to 1954, inclusive, and for the year 1956. Deficiency income tax assessment notices for said years were also sent to the Company.

The Company requested a reconsideration of the assessment, but the Commissioner refused to reconsider, hence the Company appealed to the Court of Tax Appeals. The assessments for 1951 to 1954 were contested in CTA Case No. 565, while that for 1956 was contested in CTA Case No. 578. Upon agreement of the parties the two cases were heard and decided jointly.

On May 6, 1961 the Tax Court rendered judgment ordering the Company to pay the amounts of P107,846.56, PI 34,033.01 and P71,392.82 as deficiency income taxes for the years 1953, 1954 and 1956, respectively. The Tax Court nullified the assessments for the years 1951 and 1952 on the ground that they were issued beyond the five-year period prescribed by Section 331 of the National Internal Revenue Code.

However, on August 7, 1961, upon motion of the Company, the Tax Court reconsidered its decision and further reduced the deficiency income tax liabilities of the Company to P79,812.93, P51,528.24 and P71,382.82 for the years 1953, 1954 and 1956, respectively. In this amended decision the Tax Court subscribed to the theory of the

Company that Benguet Consolidated Mining Company, hereafter referred to as Benguet, had no right to share in "Accounts Receivable," hence one-half thereof may not be accrued as an expense of the Company for a given year.

Both the Company and the Commissioner appealed to this Court. The Company questions the rate of mine depletion adopted by the Court of Tax Appeals and the disallowance of depreciation charges and certain miscellaneous expenses (G.R. Nos. L-18843 & L-18844). The Commissioner, on the other hand, questions what he characterizes as the "hybrid" or "mixed" method of accounting utilized by the Company, and approved by the Tax Court, in treating the share of Benguet in the net profits from the operation of the mines in connection with its income tax returns (G.R. Nos. L-18853 & L-18854).

With respect to methods of accounting, the Tax Code states:

"Sec. 38. General Rules. The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer but if no such method of accounting has been so employed or if the method employed does not clearly reflect the income the computation shall be made in accordance with such methods as in the opinion of the Commissioner of Internal Revenue does clearly reflect the income . . .

"Sec. 39. Period in which items of gross income included, — The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the methods of accounting permitted under Section 38, any such amounts are to be properly accounted for as of a different period . . .

"Sec. 40. Period for which deductions and credits taken. — The deductions provided for in this Title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred' dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions should be taken as of a different period . . ."

It is said that accounting methods for tax purposes[1] comprise a set of rules for determining when and how to report income and deductions. The U.S. Internal Revenue Code[2] allows each taxpayer to adopt the accounting method most suitable to his business, and requires only that taxable income generally be based on the method of accounting regularly employed in keeping the taxpayer's books, provided that the method clearly reflects income.[3]

The Company used the accrual method of accounting in computing its income. One of its expenses is the amount paid to Benguet as mine operator, which amount is computed as 50% of "net income." The Company deducts as an expense 50% of cash receipts minus disbursements, but does not deduct at the end of each calendar year what the Commissioner alleges is "50% of the share of Benguet" in the "accounts receivable." However, it deducts Benguet's 50% if and when the "accounts receivable" are actually paid. It would seem, therefore, that the Company has been deducting a portion of this expense (Benguet's share as mine operator) on the "cash & carry" basis. The question is whether or not the accounting system used by the Company justifies such a treatment of this item; and if not, whether said method used by the Company, and characterized by the Commissioner as a "hybrid method," may be allowed under the aforequoted provisions of our tax code[4]

For a proper understanding of the situation the following facts are stated: The Company has certain mining claims located in Masinloc, Zambales. Because it wanted to relieve itself of the work and expense necessary for developing the claims, the Company, on July 9, 1934, entered into an agreement (Exhibit L) with Benguet, a domestic anonymous partnership engaged in the production and marketing of chromite, whereby the latter undertook to "explore, develop, mine, concentrate and market" the pay ore in said mining claims.

The pertinent provisions of their agreement, as amended by the supplemental agreements of September 14, 1939 (Exhibit L-1) and October 2, 1941 (Exhibit L-2), are as follows:

"IV. Benguet further agrees to provide such funds from its own resources as are in its judgment necessary for the exploration and development of said claims and properties, for the purchase and construction of said concentrator plant and for the installation of the proper transportation facilities as provided in paragraphs I, II and III hereof until such time as the said properties are on a profit producing basis and agrees thereafter to expend additional funds from its own resources, if the income from the said claims is insufficient therefor, in the exploration and development of said properties or in the enlargement or extension of said concentration and transportation facilities if in its judgment good mining practice requires such additional expenditures. Such expenditures from its own resources prior to the time the said properties are put on a profit producing basis shall be reimbursed as provided in paragraph VIII hereof. Expenditures from its own resources thereafter shall be charged against the subsequent gross income of the properties as provided in paragraph X hereof.

"VII. As soon as practicable after the close of each month Benguet shall furnish Consolidated with a statement showing its expenditures made and ore settlements received under this agreement for the preceding month which statement shall be taken as accepted by Consolidated unless exception is taken thereto or to any item thereof within ten days in writing in which case the dispute shall be settled by agreement or by arbitration as provided in paragraph XXII hereof.

"VIII. While Benguet is being reimbursed for all its expenditures, advances and disbursements hereunder as evidenced by said statements of accounts, the net profits resulting from the operation of the aforesaid claims or properties shall be divided ninety per cent (90%) to Benguet and ten percent (10%) to Consolidated. Such division of net profits shall be based on the receipts, and expenditures during each calendar year, and shall continue until such time as the ninety per cent (90%) of the net profits pertaining to Benguet hereunder shall equal the amount of such expenditures, advances and disbursements. The net profits shall be computed as provided in Paragraph X hereof.

"X. After Benguet has been fully reimbursed for its expenditures, advances and disbursements as aforesaid the net profits from the operation shall be divided between Benguet and Consolidated share and share alike, it being understood however, that the net profits as the term is used in this agreement shall be computed by deducting from gross income all operating expenses and all disbursements of any nature whatsoever as may be made in order to carry out the terms of this agreement.

"XIII. It is understood that Benguet shall receive no compensation for services rendered as manager or technical consultants in connection with the carrying out of this agreement. It may, however, charge against the operation actual additional expenses incurred in its Manila Office in connection with the carrying out of the terms of this agreement including traveling expenses of consulting staff to the mines. Such expenses, however, shall not exceed the sum of One Thousand Pesos (P1,000.00) per month. Otherwise, the sole compensation of Benguet shall be its proportion of the net profits of the operation as herein above set forth.

"XIV. All payments due Consolidated by Benguet under the terms of this agreement with respect to expenditures made and ore settlements received during the preceding calendar month, shall be payable on or before the twentieth day of each month."

There is no question with respect to the 90%-10% sharing of profits while Benguet was being reimbursed the expenses disbursed during the period it was trying to put the mines on a profit-producing basis.[5] It appears that by 1953 Benguet had completely recouped said advances, because they were then dividing the profits share and share alike.

As heretofore stated the question is: Under the arrangement between the Company and Benguet, when did Benguet's 50% share in the "Accounts Receivable" accrue?[6]

The following table (summary, Exhibit A, of examiner's report of January 28, 1967, Exh. 8) prepared for the Commissioner graphically illustrates the effect of the inclusion of one-half of "Accounts Receivable" as expense in the computation of the net income of the Company:

SUMMARY:

1951

1952

1953

1954

Original share of Benguet

1,313,640.26 3,521,751.94 2,340,624.59 2,622,968.58

Additional share on Rec'bles

383,829.87 677,504.76 577,384.66 282,724.76

Total share of Benguet

1,697,470.13 4,199,256.70 2,918,009.25 2,905,693.34

Less: Receipts due from prior year operation

269,619.00 383,829.87 677,504.76 577,384.66

Share of Benguet as adjusted (Acc'd)

1,427,851.13 3,815,426.83 2,240,504.49 2,328,308.68

Less: Participation of Benguet already deducted

1,313,640.26 3,521,751.94 2,340,624.59 2,622,968.58

Additional Expense (Income)

114,210.87 293,674.89 (100,120.10) (294,659.90)

In the aforesaid table "Additional share on Rec'bles" is one-half of "Total Rec'bles" minus "Total Payables." It indicates, from the Commissioner's viewpoint, that there were years when the Company had been overstating its income (1951 and 1952) and there were years when it had been understating its income (1953 and 1954).[7] The Commissioner is not interested in the taxes for 1951 and 1952 (which had prescribed anyway) when the Company had overstated its income, but in those for 1953 and 1954, in each of which years the amount of the "Accounts Receivable" was less than that of the previous year, and the Company, therefore, appears to have deducted, as expense, compensation to Benguet bigger (than what the Commissioner claims is due) by one-half of the difference between the year's "Accounts Receivable" and the previous year's "Accounts Receivable," thus apparently understating its income to that extent.

According to the agreement between the Company and Benguet the net profits "shall be computed by deducting from gross income all operating expenses and all expenses of any nature whatsoever." Periodically, Benguet was to furnish the Company with the statement of accounts for a given month "as soon as practicable after the close" of that month. The Company had ten days from receipt of the statement to register its objections thereto.

Thereafter, the statement was considered binding on the Company. And all payments due the Company "with respect to the expenditures made and ore settlements received during the calendar month shall be payable on or before the twentieth of each month."

The agreement does not say that Benguet was to share in "Accounts Receivable." But may this be implied from the terms of the agreement? The statement of accounts (par. VIII) and the payment (part XIV) that Benguet^[8] must make are both with respect to "expenditures made and ore settlements received." "Expenditures" are payments of money.^[9] This is the meaning intended by the parties, considering the provision that Benguet agreed to "provide such funds from its own resources, etc."; and that "such expenditures from its own resources" were to be reimbursed first as provided in par. VIII, and later as provided in par. X. "Settlement" does not necessarily mean payment or satisfaction, though it may mean that; it frequently means adjustment or arrangement.¹⁰ The term "settlement" may be used in the sense of "payment," or it may be used in the sense of "adjustment" or "ascertainment of a balance between contending parties," depending upon the circumstances under which, and the connection in which, use of the term is made.¹¹ In the term "ore settlements received," the word "settlement" was not used in the concept of "adjustment," "arrangement" or "ascertainment of a balance between contending parties," since all these are "made," not "received." "Payment," then, is the more appropriate equivalent of, and interchangeable with, the term "settlement." Hence, "ore settlements received" means "ore payments received," which excludes "Accounts Receivable." Thus, both par. VIII and par. XIV refer to "payment," either received or paid by Benguet.

According to par. X, the 50-50 sharing should be on "net profits"; and "net profits" shall be computed "by deducting from gross income all operating expenses and all disbursements of any nature whatsoever as may be made in order to carry out the terms of the agreement." The term "gross profit" was not defined. In the accrual method of accounting "gross income" would include both "cash receipts" and "Accounts Receivable." But the term "gross income" does not carry a definite and inflexible meaning under all circumstances, and should be defined in such a way as to ascertain the sense in which the parties have used it in contracting.^[12] According to par. VIII^[13] the "division of net profits shall be based on the receipts and expenditures." The term "expenditures" we have already analyzed. As used, "receipts" means "money received."^[14] The same par. VIII uses the term "expenditures, advances and disbursements." "Disbursements" means "payment,"^[15] while the word "advances" when used in a contract ordinarily means money furnished with an expectation that it shall be returned.^[16] It is thus clear from par. VIII that in the computation of "net profits" (to be divided on the 90%-10% sharing arrangement) only "cash payments" received and "cash disbursements" made by Benguet were to be considered. On the presumption that the parties were consistent in the use of the term, the same meaning must be given to "net profits" as used in par. X, and "gross income," accordingly, must be equated with "cash receipts." The language used by the parties show their intention to compute Benguet's 50% share on the excess of actual receipts over disbursements, without considering "Accounts Receivable" and "Accounts Payable" as factors in the computation. Benguet then did not have a right to share in "Accounts Receivable," and, correspondingly, the Company did not have the liability to pay Benguet any part of that item. And a deduction cannot be accrued until an actual liability is incurred, even if payment has not been made.^[17]

Here we have to distinguish between (1) the method of accounting used by the Company in determining its net income for tax purposes; and (2) the method of computation agreed upon between the Company and Benguet in determining the amount of compensation that was to be paid by the former to the latter. The parties, being free to do so, had contracted that in the method of computing compensation the basis were "cash receipts" and "cash payments." Once determined in accordance with the stipulated bases and procedure, then the amount due Benguet for each month accrued at the end of that month, whether the Company had made payment or not (see par. XIV of the agreement). To make the Company deduct as an expense one-half of the "Accounts Receivable" would, in

effect, be equivalent to giving Benguet a right which it did not have under the contract, and to substitute for the parties' choice a mode of computation of compensation not contemplated by them.[18]

Since Benguet had no right to one-half of the "Accounts Receivable," the Company was correct in not accruing said one-half as a deduction. The Company was not using a hybrid method of accounting, but was consistent in its use of the accrual method of accounting.

The first issue raised by the Company is with respect to the rate of mine depletion used by the Court of Tax Appeals. The Tax Code provides that in computing net income there shall be allowed as deduction, in the case of mines, a reasonable allowance for depletion thereof not to exceed the market value in the mine of the product thereof which has been mined and sold during the year for which the return is made [Sec. 30(g) (1) (B)].[19]

The formula[20] for computing the rate of depletion is:

Cost of Mine Property

=

Rate of Depletion Per Unit
of product Mined and sold

Estimated Ore Deposit

The Commissioner and the Company do not agree as to the figures corresponding to either factor that affects the rate of depletion per unit. The figures according to the Commissioner are:

P2,646,878.44 (mine cost)

=

P0.59189 (rate of depletion per ton)

4,471,892 tons (estimated ore deposit)

while the Company insists they are:

P4,238,974.57 (mine cost)

= P1.0197 (rate of
depletion per ton)

4,156,888 tons (estimated ore deposit)

They agree, however, that the "cost of the mine property" consists of (1) mine cost; and (2) expenses of development before production. As to mine cost, the parties are practically in agreement — the Commissioner says it is P2,515,000 (the Company puts it at P2,500,000). As to expenses of development before production the Commissioner and the Company widely differ. The Company claims it is P1,738,974.56, while the Commissioner

says it is only P131,878.44. The Company argues that the Commissioner's figure is "a patently insignificant and inadequate figure when one considers the tens of millions of pesos of revenue and production that petitioner's chromite mine fields have finally produced."

As an income tax concept, depletion is wholly a creation of the statute[21]— "solely a matter of legislative grace."[22] Hence, the taxpayer has the burden of justifying the allowance of any deduction claimed.[23] As in connection with all other tax controversies, the burden of proof to show that a disallowance of depletion by the Commissioner is incorrect or that an allowance made is inadequate is upon the taxpayer, and this is true with respect to the value of the property constituting the basis of the deduction.[24] This burden-of-proof rule has been frequently applied and a value claimed has been disallowed for lack of evidence.[25]

As proof that the amount spent for developing the mines was P1,738,974.56, the Company relies on the testimony of Eligio S. Garcia and on Exhibits I, 31 and 38.

Exhibit I is the Company's report to its stockholders for the year 1947. It contains the Company's balance sheet as of December 31, 1946 (Exhibit 1-1). Among the assets listed is "Mines, Improvement & Dev." in the amount of P4,238,974.57, which, according to the Company, consisted of P2,500,000, purchase price of the mine, and P1,738,974.56, cost of developing it. The Company also points to the statement therein that "Benguet invested approximately P2,500,000 to put the property in operation, the greater part of such investment being devoted to the construction of a 25-kilometer road and the installation of port facilities." This amount of P2,500,000 was only an estimate. The Company has not explained in detail in what this amount or the lesser amount of P1,738,974.56 consisted. Nor has it explained how that bigger amount became P1,738,974.56 in the balance sheet for December 31, 1946.

According to the Company the total sum of P4,238,974.57 as "Mines, Improvement & Dev." was taken from its pre-war balance sheet of December 31, 1940. As proof of this it cites the sworn certification (Exhibit 38) executed on October 25, 1946 by R.P. Flood, in his capacity as treasurer of the Company, and attached to other papers of the Company filed with the Securities and Exchange Commission in compliance with the provisions of Republic Act No. 62 (An Act to require the presentation of proof of ownership of securities and the reconstruction of corporate and partnership records, and for other purposes). In said certification there are statements to the effect that "the Statement of Assets & Liabilities of Consolidated Mines, Incorporated, submitted to the Securities & Exchange Commission as a requirement for the reconstitution of the records of the said corporation, is as of September 1, 1946"; and that "the figure P4,238,974.57 representing the value of Mines, Improvements and Developments appearing therein, was taken from the Balance Sheet as of December 31, 1940, which is the only available source of information of the Corporation regarding the above and consequently the undersigned considers the stated figure to be only an estimate of the value of those items at the present time." This figure, the Company claims, is based on entries made in the ordinary and regular course of its business dating as far back as before the war. The Company places reliance on Sec. 39, Rule 130, Revised Rules of Court (formerly Sec. 34, Rule 123), which provides that entries made at, or near the time of the transactions to which they refer, by a person deceased, outside of the Philippines or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty."

Note that Exhibit 38 is not the "entries" covered by the rule. The Company, however, urges, unreasonably, we think, that it should be afforded the same probative value since it is based on such "entries" meaning the balance sheet of December 31, 1940, which was not presented in evidence. Even with the presentation of said balance sheet the Company would still have had to prove (1) that the person who made the entry did so in his professional capacity or in the performance of a duty; (2) that the entry was made in the ordinary course of business or duty;

(3) that the entry was made at or near the time of the transaction to which it related; (4) that the one who made it was in a position to know the facts stated in the entry; and (5) that he is dead, outside the Philippines or unable to testify.[26]

A balance sheet may not be considered as "entries made in the ordinary course of business," which, according to Moran:

"means that the entries have been made regularly, as is usual, in the management of the trade or business. It is essential, therefore, that there be regularity in the entries. The entry which is being introduced in evidence should appear to be part of a group of regular entries, x x x The regularity of the entries may be proved by the form in which they appear in the corresponding book." [27]

A balance sheet, as that word is uniformly used by bookkeepers and businessmen, is a paper which shows "a summation or general balance of all accounts," but not the particular items going to make up the several accounts; and it is therefore essentially different from a paper embracing "a full and complete statement of all the disbursements and receipts, showing from what sources such receipts were derived, and for what and to whom such disbursements or payments were made, and for what object or purpose the same were made"; but such matters may find an appropriate place in an itemized account.[28] Neither can it be said that a balance sheet complies with the third requisite, since the entries therein were not made at or near the time of the transactions to which they related.

"In order to render admissible books of account it must appear that they are books of original entry, that the entries were made in the ordinary course of business, contemporaneously with the facts recorded, and by one who had knowledge of the facts. *San Francisco Teaming Co v Gray* (1909) 11 CA314, 104 P 999. See *Brown v Ball* (1932) 123 CA 758, 12 P2d 28, to the effect that the books must be kept in the regular course of business." [29]

"A 'ledger' is a book of accounts in which are collected and arranged, each under its appropriate head, the various transactions scattered throughout the journal or daybook, and is not a 'book of original entries,' within the rule making such books competent evidence. *First Nat. Building Co. v. Vandcrberg*, 119 P 224, 227; 29 Okl. 583." [30]

"Code Iowa, # 3658, providing that 'books of account' are receivable in evidence, etc., means a book containing charges, and showing a continuous dealing with persons generally. A book, to be admissible, must be kept as an account book, and the charges made in the usual course of business. *Security Co. v. Graybeal*, 52 NW 497, 85 Iowa 543, 39 Am St Rep 311." [31]

Books of account may therefore be admissible under the rule. In tax cases, however, this Court appears not to place too high a probative value on them, considering the statement in the case of *Collector of Internal Revenue v. Reyes* [32] that "books of account do not prove per se that they are veracious; in fact they may be more consistent than truthful." Indeed, books of account may be used to carry out a plan of tax evasion.[33]

At most, therefore, the presentation of the balance sheet of December 31, 1940 would only prove that the figure P4,238,974.57 appears therein as corresponding to mine cost. But the Company would still need to present proof to justify its adoption of that figure. It had the burden of establishing the components of the amount of P1,738,974.57: what were the particular expenses made and the corresponding amount of each, so that it may be determined whether the expenses were actually made and whether the items are properly part of cost of mine development, or are actually depreciable items.

In this connection we take up Exhibit 31 of the Commissioner. This is the memorandum of BIR Examiner Cesar P. Aguirre to the Chief of the Investigating Division of the Bureau of Internal Revenue. According to this report

"the counsel of the taxpayer alleges that the cost of Masinloc Mine properties and improvement is P4,238,974.56 instead of P 2,646,879.44 as taken up in this report," and that the expenses as of 1941 were as follows:

Assets subject to

1941

1.

Depletion

P 2,646,878.44

2.

10 years depreciation

1,188,987.76

3.

3 years depreciation

78,283.75

4.

20 years depreciation .

9,143.63

5.

10% amortization

171,985.00

P 4,085,277.58

Less: Cost Chromite Field

2,515,000.00

Expenses by operator

P 1,570,277.58

The examiner concluded that "in the light of the figures listed above, the counsel for the taxpayer fairly stated the amount disbursed by the operator until the mine property was put to production in 1939." The Company capitalizes on this conclusion, completely disregarding the examiner's other statements, as follows:

"The counsel, however, is not aware of the fact that the expenses made by the operator are those which are depreciable and/or amortizable instead of depletable expenditures. The first post-war Balance Sheet (12/31/46) of the taxpayer shows that its Mines, Improvement & Dev. is P4,328,974.57. Considering the expenditures

incurred by Benguet Consolidated as of 1941 (P1,570,277.58); the rehabilitation expenses in 1946 (P211,223.72); and the cost of the Masinloc Chromite Field, the total cost would only be P4,296,501.30. Of the total expenditure of P1,570,277.58 as of 1941, P1,438,399.14 were spent on depreciable and/or amortizable expenses and P131,878.44 were made for the direct improvement of the mine property.

"In as much as the expenditure of the operator as of 1941 and the cost of the mine property were taken up in the account Mines, Improvement & Rehabilitation in 1946, all its assets that were rightfully subject to depletion was P2,646,878.44."

Because of the above qualification a large part of the amount spent by the operator[34] may not be allowed for purposes of depletion deduction,[35] depletion being different from depreciation.[36]

The Company's balance sheet for December 31, 1947 lists the "mine cost" of P2,500,000 as "development cost" and the amount of P1,738,974.37 as "suspense account (mining properties subject to war losses)." The Company claims that its accountant, Mr. Calpo, made these errors, because he was then new at the job. Granting that that was what had happened, it does not affect the fact that the evidence on hand is insufficient to prove the cost of development alleged by the Company.

Nor can we rely on the statements of Eligio S. Garcia, who was the Company's treasurer and assistant secretary at the time he testified on August 14, 1959. He admitted that he did not know how the figure P4,238,974.57 was arrived at, explaining: "I only know that it is the figure appearing on the balance sheet as of December 31, 1946 as certified by the Company's auditors; and this we made as the basis of the valuation of the depletable value of the mines." (p. 94, t.s.n.)

We, therefore, have to rely on the Commissioner's assertion that the "development cost" was P131,878.44, broken down as follows: assessment, P34,092.12; development, P61,484.63; exploration, P13,966.62; and diamond drilling, P22,335.07.

The question as to which figure should properly correspond to "mine cost" is one of fact.[37] The findings of fact of the Tax Court, where reasonably supported by evidence, are conclusive upon the Supreme Court.[38]

As regards the estimated ore deposit of the Company's mines, the Company's figure is "4,156,888 tons," while that of the Commissioner is the larger figure "4,471,892 tons." The difference of 315,004 tons was due to the fact that the Commissioner took into account all the ore that could probably be removed and marketed by the Company, utilizing the total tonnage shipped before and after the war (933,180 tons) and the total reserve of shipping material pegged at 3,538,712 tons. On the other hand the Company's estimate was arrived at by taking into consideration only the quantity shipped from solid ore, namely, 733,180 tons (deducting from the total tonnage shipped before and after the war an estimated float of 200,000 tons), and then adding the total recoverable ore which was assessed at 3,423,708 tons.

The above-stated figures were obtained from the report[39] of geologist Paul A. Schaeffer, who had been earlier commissioned by the Company to conduct a study of the metallurgical possibilities of the Company's mines. In order to have a fair understanding of how the contending parties arrived at their respective figures, We quote apertinent portion of the geologist's report:

"Mining Data

Ore mined before the war 336,850 tons

Ore mined after the war 1,779,350 tons

Total 2,116,200 tons

x Ore shipped before the war 337,611 tons

x x Ore shipped after the war 595,569 tons

Total 933,180 tons

Less an estimated float of 200,000 tons

Total shipped from solid ore 733,180 tons

Proportion shipped = 733,180

mined 2,116,200

" or approximately 35% of mine ore is shipped.

Dumps

Material on dumps now total 383,346 tons. Using the above tonnage for ore shipped from mining (excluding float) there should have been a total of 1,383,020 tons of waste produced of which almost 1,000,000 tons has been removed from the mining area of the hill. I believe that half still remains as alluvium along the three principal intermittent creeks which head in the mining area, and the remaining half million has washed into the river. Of course this is pure speculation.

x — much was float material, probably about one half, leaving about 170,000 tons mined from the hill.

xx — some float included.

xxx xxx xxx

Ore Reserve

The A and B ore is considered sufficiently developed by drilling and tunnels to constitute the ore reserve. C ore must be checked by drilling.

Tons

A

7,729,800

B

1,780,500

Total

9,510,300

C

2,212,000

Grand Total

11,722,300

Therefore, the total ore reserve may be considered to be ,. 9,5 10,300 tons. Based on past experience 35% is shipping ore.

With the present mill there is considerably more recovery. The ore is mined selectively (between dikes). The results are about as follows:

Of 1,500 tons mined, 500 tons are sorted and shipped direct, the remaining 1,000 tons going to the mill from which 250 tons are recovered for shipment. Thus 50% of the selectively mined ore is recovered.

Thus for the reserve tonnage:

Total reserve 9,510,300

Less 20% dike material 1,902,060

7,608; 240

Less 10% low grade ore 760,824

6,847,416

x

.50

Total recoverable or 3,423,708 tons

It is probable that 30% of the dump material could be recovered by milling. So adding to the above 115,004 ore recoverable from the dumps, we get a total reserve of shipping material of 3,538,712 tons. With the sink float section added to the mill this should be increased by perhaps 20%."

On the basis of the above report the Company faults the Tax Court in sustaining the Commissioner's estimate of the ore deposit. While the figures corresponding to the total gross tonnage shipped before and after the war have not been assailed as erroneous, the Company maintains that the estimated float[40] of 200,000 tons as reported in the geologist's study should have been deducted therefrom, such that the combined total of the ore shipped should have been placed at a net of 733,180 tons instead of 933,180 tons. The other figure the Company assails as having been improperly included by the Commissioner in his statement of ore reserve refers to the "Recoverable (ore) from dump material — 115,004 tons." The Company's argument in this regard runs thus:

"x x x This apparently was included by respondent by virtue of the geologist's report that 'it is probable that 30% of the dump material should be recovered by milling.' Actually, however, such recovery from dump or waste material is problematical and is merely a contingency, and hence, the item of 115,004 tons should not be included in the statement of the ore reserves. Taking out these two items improperly and erroneously included in respondent Commissioner of Internal Revenue's examiner's report, to wit, float or waste material of 200,000 tons and supposedly recoverable ore from dump materials of 115,004 tons, totalling 315,004 tons, from the total figure of 4,471,892 tons given by him, the figure of 4,156,888 tons results as the proper statement of the total estimated ore reserves, as correctly used by petitioner in its statement of ore reserves for purposes of depletion." [41]

We agree with the Company's observation on this point. The geological report appears clear enough: the estimated float of 200,000 tons consisting of pieces of ore that had broken loose and become detached by erosion from their original position could hardly be viewed as still forming part of the total estimated ore deposit. Having already

been broken up into numerous small pieces and practically rendered useless for mining purposes, the same could not appreciably increase the ore potentials of the Company's mines. As to the 115,004 tons which geologist Paul A. Schaeffer believed could still be recovered by milling from the material on dumps, there are no sufficient data on which to affirm or deny the accuracy of the said figure. It may, however, be taken as correct, considering that it came from the Company's own commissioned geologist and that by the Company's own admission[42] by 1957 it had mined and sold much more than its original estimated ore deposit of 4,156,888 tons. We think that 4,271,892 tons[43] would be a fair estimate of the ore deposit in the Company's mines

The correct figures therefore are:

P2,515,000.00 (mine cost proper) + P131.878.44 (development cost),
4,271,892 (estimated ore deposit)

or

P 2,646 878.44 (mine cost)
4,271,892 (estimated ore deposit) = P0.6196 (rate of depletion per ton)

In its second assigned error, the Company questions the disallowance by the Tax Court of the depreciation charges claimed by the Company as deductions from its gross income.[44] The items thus disallowed consist mainly of depreciation expenses for the years 1953 and 1954 allegedly sustained as a result of the deterioration of some of the Company's incomplete constructions.

The initial memorandum[45] of the BIR examiner assigned to verify the income tax liabilities of the Company pursuant to the latter's claim of having overpaid its income taxes states the basic reason why the Company's claimed depreciation should be disallowed or readjusted, thus: since "x x x, up to its completion (the incomplete asset) has not been and is not capable of use in the operation, the depreciation claimed could not, in fairness to the Government and the taxpayer, be considered as proper deduction for income tax purposes as the said asset is still under construction." Vis-a-vis the Commissioner's consistent position in this regard the Company simply repeatedly requested for time[46] — in view of the alleged voluminous working sheets that had to be re-evaluated and re-computed to justify its claimed depreciation items — within which to submit a separate memorandum in itemized form detailing the Company's objections to the items of depreciation adjustments or disallowances for the years involved. Strangely enough, despite the period granted, the record is bare that the Company ever submitted its itemized objections as proposed. Inasmuch as the taxpayer has the burden of justifying the deductions claimed for depreciation, the Company's failure to discharge that burden prevents this Court from disturbing the Commissioner's computation. For taxation purposes the phrase "out of its not being used," with reference to depreciation allowable on assets which are idle or the use of which is temporarily suspended, should be understood to refer only to property that has once been used in the trade or business, not to property that has never been actually devoted to the taxpayer's business, particularly incomplete assets that have yet to be used.

The Company's third assigned error assails the Court of Tax Appeals in not allowing the deduction from its gross income of certain miscellaneous business expenditures in the course of its operation for the years 1954 and 1956. For 1954 the deduction claimed amounted to P38,081.20, of which the Court allowed P25,600.00 and disallowed P13,481.20[47] "for lack of any supporting paper or evidence." For the year 1956 the claim amounted to P20,050.00 of which the Court allowed P2,460.00, representing the one-month salary Christmas bonus given to some of the employees, and upheld the disallowance of P17,590.00 on the ground that the Company "failed to prove substantially that said expenses were actually incurred and are legally deductible expenses."

Regarding the disallowed amount of PI 3,481.20 for the year 1954, the Company submits that it consisted of expenses supported by "vouchers and cancelled checks evidencing payments of these amounts," and were

necessary and ordinary expenses of business for that year. On the disallowance by the Tax Court of the sum of P17,590.00 out of a total claimed deduction for miscellaneous expenses for 1956 amounting to P20,050.00, the Company advances the same argument, namely, that the amount consisted of normal and regular expenses for that year as evidenced by vouchers and cancelled checks.

These vouchers and cancelled checks of the Company, however, only show that the amounts claimed had indeed been spent, and confirm the fact of disbursement, but do not necessarily prove that the expenses for which they were disbursed are deductible items. In the case of *Collector of Internal Revenue vs. Goodrich International Rubber Co.*[48] this Court rejected the taxpayer's similar claim for deduction of alleged representation expenses, based upon receipts issued not by the entities to which the alleged expenses had been paid but by the officers of taxpayer corporation who allegedly paid them. It was there stated:

"If the expenses had really been incurred, receipts or chits would have been issued by the entities to which the payments had been made, and it would have been easy for Goodrich or its officers to produce such receipts. These receipts issued by said officers merely attest to their claim that they had incurred and paid said expenses. They do not establish payment of said alleged expenses to the entities in which the same are said to have been incurred."

In the case before Us, except for the Company's own vouchers and cancelled checks, together with the Company treasurer's lone and uncorroborated testimony regarding the purpose of said disbursements, there is no other supporting evidence to show that the expenses were legally deductible items. We therefore affirm the Tax Court's disallowance of the same.

In resume, this Court finds:

(1) that the Company was not using a "hybrid" method of accounting in the preparation of its income tax returns, but was consistent in its use of the accrual method of accounting; that the rate of depletion per ton of the ore deposit mined and sold by the Company is P0.6196 per ton,[49] not P0.59189 as contended by the Commissioner nor P1 .0197 as claimed by the Company;

(2) that the disallowance by the Tax Court of the depreciation charges claimed by the Company is correct in view of the latter's failure to itemize and/or substantiate with definite proof that the Commissioner's own method of determining depreciation is unreasonable or inaccurate;

(3) that for lack of supporting evidence to show that the Company's claimed expenses were legally deductible items, the Tax Court's disallowance of the same is affirmed.

As recomputed then, the deficiency income taxes due from the Company are as follows:

1953

Net income as per audited return

P 5,193,716.89

Unallowable deductions &
additional income

Depletion overcharged

P178,477.04

Depreciation adjustment

93,862.96

Total adjustments

272,340.00

Net income as per investigation

5,466,056.89

Income tax due thereon[50].....

1,522,495.92

Less amount already assessed

1,446,241.00

DEFICIENCY TAX DUE

76,254.92

1954

Net income as per audited return

P 3,320,307.68

Unallowable deductions &
additional income

Depletion overcharged

P147,895.72

Depreciation adjustment

11,878.12

Miscellaneous expenses

13,481.20

Total adjustments

173,255.04

Net income as per investigation

3,493,562.72

Income tax due thereon

970,197.56

DEFICIENCY TAX DUE

48,511.56

1956

Net income as per audited

P11,504,483.97

Unallowable deductions &
additional income

Depletion overcharged

P221,272.98

Miscellaneous expenses

17,590.00

Total adjustments

238,862.98

Net income as per investigation

11,743,346.95

Income tax due thereon

3,280,137.14

Less amount already assessed

3,213,256.00

DEFICIENCY TAX DUE.....

66,881.14

TOTAL DEFICIENCY TAXES DUE.....

191,647.62

WHEREFORE, the appealed decision is hereby modified by ordering Consolidated Mines, Inc. to pay the Commissioner of Internal Revenue the amounts of P76,254.92, P48,511.56 and P66,881.14 as deficiency income taxes for the years 1953, 1954 and 1956, respectively, or the total sum of P191,647.62 under the terms specified by the Tax Court, without pronouncement as to costs.

Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.
Teehankee, J., did not take part.

[1] While taxable income is based on the method of accounting used by the taxpayer, it will almost always differ from accounting income. This is so because of a fundamental difference in the ends the two concepts serve. Accounting attempts to match cost against revenue. Tax law is aimed at collecting revenue. It is quick to treat an item as income, slow to recognize deductions or losses. Thus, the tax law will not recognize deductions for contingent future losses except in very limited situations. Good accounting, on the other hand, requires their recognition. Once this fundamental difference in approach is accepted, income tax accounting methods can be understood more easily. 33 Am. Jur. 2d 688.

[2] The Philippine income tax law was patterned after the U.S. tax law. *Limpan Investment Corp. v. Com. of Internal Revenue*, L-21570, July 26, 1966.

[3] 33 Am. Jur. 2d 690.

[4] The 1954 Code of the United States added new provisions setting out the methods of accounting that may be used for tax purposes. These are: (1) the cash receipts and disbursements method; (2) an accrual method; (3) any other method permitted by the Code provisions, such as the completed contract method or the installment method; and (4) any combination of these methods permitted under the Regulations of the Treasury Department.

It should be noted that these provisions explicitly allow the use of a hybrid method of accounting in accordance with regulations to be issued by the Treasury Department. 2 Mertcns, *The Law of Federal Income Taxation*, 1961 ed., Chapter 12, pp. 18-19.

For the exact wording of the U.S. Tax Code, see Sec. 446 IRC, 26 USCA 446, p. 398. The Philippine Tax Code does not have a provision similar thereto.

[5] It appears from Clause VIII that the 90-10 sharing arrangement was computed on an annual basis, whereas the 50-50 sharing thereafter was determined on a monthly basis.

[6] That is, if Benguet shares in the "accounts receivable."

[7] As may be seen from the table, the Company appears to be exaggerating income when the "Accounts Receivable" is bigger than the "Accounts Receivable" of the preceding year, and seems to be underestimating income when the present year's "Accounts Receivable" is smaller than the "Accounts Receivable" of the previous year. This is so because the alleged 1/2 share of Benguet in the "Accounts Receivable" for the previous year is subtracted from the total share (that is, 1/2 of "Cash Receipts" plus "Accounts Receivable") it should supposedly

receive for the year, in order that it may not receive the same income twice, once when it accrued, and secondly when it was paid.

[8] While from the agreement it was Benguet that was to receive the income and pay the Company its 50% share, actually the income accrued to the Company, all the expenses disbursed by Benguet were for the account of the Company, and the 50% share retained by Benguet was an expense of the Company.

[9] In its ordinary meaning "expenditure" means payment. 15A Words & Phrases 414, citing *People v. Kane* 61 N.Y.S. 195, 43 App Div 472.

The word "expenditure" has been defined as the spending of money; the act of expending; disbursement expense; money expended; a laying out of money; payment. 15A Words & Phrases 414, citing *Crow v. Board of Sup'rs of Stanislaus County*, 27 P2d 655, 135 Cal App 451.

[10] 39 Words & Phrases, 41, citing *Beatl v. Hudson County Water Co*, 185 F 179, 182.

[11] 41 Words & Phrases 41, citing *Michael v. Donohue* 102 SE 803, 805, 86 W Va 34.

[12] 18A Words and Phrases 490-491, citing *Marlton Operating Corp. v. Local Textile Mills*, 137 N.Y.S. 2d 438 440.

[13] Par. VIII had been amended by the agreement of Sept. 14, 1939 (Exhibit L-1). The original is as follows: Benguet shall be entitled to retain all proceeds resulting from the operation of the aforesaid claims or properties under this agreement until such time as the net profit therefrom shall equal the amount of the expenditures, advances and disbursements made by Benguet hereunder as evidenced by said statements of account.

The word "proceeds" is one of equivocal import, and of great generality. It does not necessarily mean money, its meaning in each case depending very much upon the connection in which it is employed and the subject-matter to which it is applied. *Phelps v. Harris*, 101 US 370, 25 L Ed 855; *Appeal of Thompson*, 89 Pa 36; *Dow v. Whetten*, NY 8 Wend 160; *Haven v. Gray*, 12 Mass 71, 76; *Wheeler & Wilson Mfg Co v. Winnett*, 91 NW 514, 514, 3 Neb unof, 293. Strictly speaking, it implies something that arises out of or from another thing, and in its ordinary acceptance, when applied to the income to be derived from real estate, it embraces the idea of issues, rents, profits, or produce. In a commercial sense it means the sum, amount, or value of goods or things sold and converted into money. *Hunt v. Williams* 26 NE 177, 126 Ind 493, 494. 34 Words & Phrases 208.

The term "proceeds" was apparently used in the commercial sense, considering that the provision refers to the "statement of account," which as we have said, is based on "expenditures made and ore settlements received."

[14] 36 Words and Phrases 701, citing *Wright's Adm'rs v. Wilkerson*, 41 Ala 267, 272.

[15] 12A Words and Phrases 241, citing *Woodford v. US* 77, F2d 861.

[16] 2A Words & Phrases 112, citing *Linderman v Carmin* 164 SW 614.

[17] Under the accrual system income is accruable in the year in which the taxpayer's right thereto becomes fixed and definite, even though it may not be actually received until a later year, while a deduction for a liability is to be accrued and taken when the liability becomes fixed and certain, even though it may not be paid until a later year. *Commissioner of Internal Revenue v. Blame*, 141 F2d 201.

It has been held that the basis of the accrual system of accounting is that obligations incurred in the normal course of business will be discharged in due course; that the deductions have been "paid or accrued" or "paid and incurred;" but in order to be accruable in the taxable year, a valid obligation upon which the profit (or loss, in the

case of a deduction) is to be determined must have existed in the year in which the obligation became binding or enforceable. The date of the accrued right to receive income, or the obligation to pay or expend money constituting a deductible loss, is the date that fixes liability. Gain or loss may not be said to be fixed or accrued when the obligation is contingent upon the happening of a future event. No duty or liability to pay an income tax upon a transaction arises until the taxable year in which the event constituting the condition precedent occurs under any system of accounting. *Utah Idaho Sugar Co v. State Tax Commission*, 73 P 2d 974.

In the case of *Republic v. De la Rama*, L-21106, November 29, 1966, the Supreme Court, in denying the imposition of the income tax, quoted with approval the finding of the lower court that there is no showing that income in the form of said dividend had really been received which is the verb used in Sec. 21 of the National Internal Revenue Code, by The Estate, whether actually or constructively.

[18] The situation may thus be likened to that where a company and its sales agent agreed that the latter's salary for each year was to be a given per cent of his "cash collections," and because the company was keeping its books in accordance with the accrual method, it is made to compute the agent's salary on the accrual basis.

[19] In American law, the statutory concept of taxable income involves the allowance of some deductions based on the theory that production of income may necessitate exhaustion of capital assets employed in that production. Typical of such deductions are depreciation, obsolescence, depletion and losses. The exhaustion of capital may be slow or rapid, sudden or gradual. The rule of exhaustion is in essence immaterial, but what is important is that something valuable is dissipated by the very act of producing that income which becomes subject to tax. *McIrens*, *Law of Federal Income Taxation*, 1966 Revision of Volume 4, Chapter 24, pp. 4-5.

Under the American Tax Code, there are three kinds of depletion: (1) cost depletion which is based upon the cost or March 1, 1913 value of the particular deposit to the taxpayer; (2) discovery depletion, the concept of which is that of a reward to the taxpayer for discovering a hitherto unknown oil, gas, or mineral deposit and is usually based upon the fair market value of the particular natural resource in question within 30 days after the date of its discovery; and (3) percentage depletion, which represent a legislative attempt to avoid many problems arising in connection with the computation of cost and discovery depletion, it was included in the Code as a substitute for discovery depletion, although it is not based on discovery. In practice, it is based upon a fixed percentage of the income realized during the taxable year from the particular property. The percentages are strictly arbitrary and vary with the different resources. *Id*, Chapter 24, pp. 9-10.

[20] In determining the amount of cost depletion allowable the following three facts are essential, namely, (1) the basis of the property, (2) the estimated total recoverable units in the property; and (3) the number of units recovered during the taxable year in question. As used as an element in cost depletion, basis means the dollar amount of the taxpayer's capital or investment in the property which he is entitled to recover tax free during the period he is removing the mineral in the deposit. *Id*, Chapter 24, p. 139.

[21] In that regard it is different from the economic or geological concept of depletion. Were Congress to discontinue the allowance of a deduction for depletion, there is little doubt such disallowance would be safe from attacks on its constitutionality. *Id*, Chapter 24, p. 5.

[22] *Comm. v. Southwest Exploration Co.*, 350 US 308, 100 L Ed 347, 76 S. Ct 395 (1956); *Parsons v. Smith*, 359 US 215, 3 L Ed 2d 747, 79 S. Ct 656 (1959).

[23] *White v. US*, 305 US 281, 83 L Ed 172, 59 S. Ct 179 (1938); *Deputy v. Du Pont*, 308 US 488, 493, 84 L Ed 416, 80 S. Ct 363, 366 (1940); *E & J Gallo Winery v. Comm.*, 227 F2d 699.

[24] *Mertens*, *Law of Federal Income Taxation*, 1966 Revision of Volume 4, Chapter 24, p. 44, citing *Reinecke v.*

Spalding, 280 US 227, 74 L ED 385, 50 S. CT 96 (1930); Thompson Land & Charcoal Co., TC Memo Op, Dkt 26495 (Aug. 15, 1951); and Marion Slade Townsend, TC Memo Op, Dkt 42647 (1954).

[25] *Id.*, Chapter 24, p. 44, citing Mapel-Sterling Coal Co., 22 BTA 817 (mines among others).

[26] 5 Moran, Comments on the Rules of Court, Court, 1963 ed., p. 353.

[27] *Id.*, p. 354.

[28] *Eyre v. Harmon*, 28 P 779

[29] Deering's California Codes Annotated, Civil Procedure, Evidence, No. I953f, p. 515.

[30] 5 Words & Phrases 690.

[31] *Id.*, p. 689.

[32] L-t 1534 & L-11558, Nov. 25, 1958.

[33] In (he confession, defendant admitted that at least after 1925 he had kept two sets of books, one secret "true book" and another a "false book"; that he had used this system of bookkeeping for the purpose of evading his income tax. *Wiggins v. US*, 64 F 2d 950.

[34] In this connection, the Commissioner claims that there is one important reason why we should not sustain the Company's stand that the sum of P2,500,000 or the lesser amount of PI ,738,974.57, allegedly spent by Benguet should be considered part of the depletable cost: Since Benguet "is first to be 'fully reimbursed for its expenditures, advances and disbursements' before any profit can be distributed between them, there is no reason for including the amount so spent by Benguet, as it has a right to reimbursement anyway."

The Commissioner's claim is not correct. Assuming that Benguet had indeed spent PI ,738,974.57 in developing the mine, the fact having been established by adequate proof, and Benguet had been reimbursed by the Company, the Commissioner's assertion would have been correct with respect to Benguet

— it would not have been entitled to claim the amount as a depletion deduction. But the Company, which would have reimbursed Benguet, would have a right to the deduction, because it would have been the one, in effect, which had incurred the development expense.

[35] The amount recoverable through depreciation and through deductions other than depletion must, of course, be eliminated in order to arrive at the basis for the mineral deposit alone. Mertens, *Law of Federal Income Taxation*, 1966 Revision of Volume 4, Chapter 24, p. 140.

[36] Both depletion and depreciation are predicated on the same basic premise of avoiding a tax on capital. The allowance for depletion is based on the theory that the extraction of minerals gradually exhausts the capital investment in the mineral deposit. The purpose of the depletion deduction is to permit the owner of a capital interest in mineral in place to make a tax-free recovery of that depleting capital asset. A depletion is based upon the concept of the exhaustion of a natural resource whereas depreciation is based upon the concept of the exhaustion of the property, not otherwise a natural resource, used in a trade or business or held for the production of income. Thus, depletion and depreciation are made applicable to different types of assets. And a taxpayer may not deduct that which the Code allows as a deduction of another. *Id.*, Chapter 24, pp. 6-7.

[37] " For a question to be one of law it must involve no examination of the probative value of the evidence presented by the litigants or any of them. And the distinction is well-known; There is a question of law in a given

case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts. *Ramos v. Pepsi-Cola Bottling Co. of the Phil.*, L-22533, Feb. 9, 1967.

[38] *Philippine Guaranty Co. v. Comm.*, L-22074, Sept. 6, 1965; *Limpan Investment Corporation v. Com. of Int. Revenue*, supra; *Yupangco Stee v. Comm.*, L-22259, Jan. 19, 1966; *Buluan Sawmill v. CTA*, L-20601, Feb. 28, 1966; *Tan Guan v. CTA*, L-23676, Apr. 27, 1967; *Republic v. Razon*, L-17462, May 29, 1967.

[39] Exhibit J. The survey of the mining area was begun in June 1949 and completed about the middle of July 1949. The report should be considered to show the configuration of the subject mines as of July 1, 1949.

[40] This float material consists of stone and waste which does not contain ore.

[41] Petitioner Consolidated[^] brief in G.R. Nos. L-18843 & L-18844, p. 33.

[42] See: Exh. "Q-10", p.8. Of course, the Company insists that the increased output was due to modernized mining and processing methods which have no bearing on the estimated ore reserves at the time of acquisition. This reasoning, while acceptable, however fails to consider that the estimated ore deposit, particularly after the original estimated ore deposit should be proved inaccurate by subsequent mining ventures which were able to produce much more than expected, is simply the product of an educated guess and does not operate to prevent a re-estimation of the nearest actual estimated ore deposit on the basis of newly-acquired data which would accurately reflect the ore potentials of the Company's mines.

[43] This figure is arrived at by adding to the total recoverable ore (3,423,708 tons) the total tons of ore shipped from solid ore (733,180 tons) and the total ore recoverable from the material on dumps (30% of 383,346 tons of materials on dumps, or 115,004 tons),

[44] Section 30 (0. par. 1 of the Tax Code permits the taxpayer, in computing the net income, to deduct from the gross income "(A) reasonable allowance for deterioration of property arising out of its use or employment in the business or trade, or out of its not being used: Provided x x x."

[45] Exhibit "8".

[46] See: Exhibit "13" Memorandum of the Company dated March 11, 1957 embodying its objections to the BIR investigation report dated January 26, 1957; Exhibit "29" — Memorandum of the Company dated December 14, 1957 in answer to the Commissioner's formal notification dated November 22, 1957 regarding the discrepancies found in the income tax returns of the Company. It is noticeable that even the Company's petition for review filed with the Tax Court (Cases Nos. 565 & 578) did not make mention nor place in issue the depreciation adjustments or disallowances ordered by the Commissioner. In fact, it was only in the Company's memorandum in support of its petition that the Company discussed for the first time depreciation adjustments as a contentious issue before the Tax Court.

[47] As gathered from the schedule of disallowance for the year 1954 (Exh. "N" for Consolidated; Exh. "8-A" for the Commissioner), the bulk of these expenses in the itemized sums of P8,065.00, P4,916.20, P500.00 and P2,000.00, totalling P13,481.20, respectively consisted of expenses simply identified as disbursements by the Company president from his discretionary fund, Christmastime expenses alleged incurred by way of compensation or gifts to deserving persons who had rendered valuable services or promoted the interests of the Company, expenses allegedly incurred by the Company vice-president in his periodic trip to the Company mines at Masinloc and contribution to the Base Metal Association of the Philippines of which the Company was a ranking member of.

[48] G.R. No. L-22255, December 22, 1967; 21 SCRA 1336.

[49] With the rate of depletion per unit of the chrome ore mined and sold by the Company pegged at P0.6196, the task of determining the amount of depletion allowance for the years concerned should be of little problem. In 1953 the 468,549 tons of chrome ore mined and sold by the Company were valued at P14,056,470.00. In 1954 the 388,790 tons of chrome ore shipped by the Company were valued at P1,660,220.00 while in 1956 the 581,685 tons of chrome ore shipped realized the amount of P20,332,880.00. The rate of depletion per unit having been established to be P0.6196, the amounts of P290,312.96, P240,894.28 and P360,412.02 would correspond to the mine depletion allowances for the years 1953, 1954 and 1956, respectively.

Since the Company had been consistently charging a depletion rate of P1.00 per ton of ore shipped by it, or P468,790.00, P388,790.00 and P581,685.00 for the years 1953, 1954 and 1956, respectively, there really appears to be a depletion overcharge obtained by getting the difference | between the amounts charged by the Company as depletion allowances and "the correct amount as determined in this decision of P178,477.04 for "1953, P147,895.72 for 1954 and P221,272.98 for 1956.

[50] At the time (1958) the Commissioner assessed the alleged deficiency income taxes from the Company, the rate of taxes on domestic corporations upon their income were as follows: 20% on net income not exceeding P100,000.00 and 28% on net income exceeding P100,000.00 (section 24(a) of the Tax Code). (As amended, however, the rate of taxes has been increased to 25% on net income not exceeding P100,000.00 and 35% on net income exceeding P100,000.00).

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