

**VISAYAN CEBU TERMINAL CO., INC., PETITIONER AND APPELLANT,
VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT AND
APPELLEE.**

G.R. No. L-12798. May 30, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petitioner Visayan Cebu Terminal Co., Inc., seeks a review of the decision of the Court of Tax Appeals in the above entitled case. The dispositive part of said decision reads as follows:

"For the Foregoing Considerations, the decision appealed from is hereby modified, and appellant is hereby ordered to pay the Collector of Internal Revenue, within a reasonable period to be fixed by the latter, the sum of P15,517.00, computed below:

Net income per return

P41,596.45

Disallowances:

(1)

Salaries

500.00

(2)

Representation Expenses:

As claimed by appellant

75,855.88

Allowed

10,000.00

65,855.88

(3)

Miscellaneous expenses

5,768.00

Net income subject to tax

P113,720.33

Tax due on P113,720.33:

P100,000.00 at 20%

P20,000.00

P13,720.00 at 28%

3,842.00

P23,842.00

Less tax previously assessed and paid

8,325.00

Deficiency tax

P15,517.00

With costs against appellant."

The facts, which are not disputed, are set forth in the aforementioned decision, from which we quote:

"The appellant, Visayan Cebu Terminal Co. Inc., is a corporation organized for the purpose of handling arrastre operations in the port of Cebu. It was awarded the contract for the said arrastre operations by the Bureau of Customs, pursuant to Act No. 3002, as amended.

"On March 1, 1952, appellant filed its income tax return for 1951 reporting a gross income of P420,633.40 and claimed deductions amounting to P379,036.95, leaving a net income of P41,596.45 on which it paid income tax in the sum of P8,319.29. The sum of P379,036.95 claimed as deductions consisted of various items, among which were the following:

1.

Salaries—

(a)

Salary and bonus of Juan

Eugenio Lo

P1,875.00

(b)

Salary of Felix Go Chan

250.00

(c)

Salary of Teotimo Tiu

Tiam

250.00

P2,375.00

2.

Representation expenses

75,855.88

3.

Miscellaneous expenses

(a)

Christmas bonus given to

various persons

P1,500.00

(b)

Tips to ships' officers

4,800.00

6,300.00

Total

P84,530.88

"The said sums of P2,375.00, P75,855.88 and P6,300.00, representing salaries, representation expenses and miscellaneous expenses, respectively, or a total of P84,530.88, were disallowed by the Collector of Internal Revenue, thus giving rise to a deficiency assessment of P18,991.00.

* * * * *

"Upon request for reconsideration, the Collector modified the deficiency income tax assessment by allowing the deduction from appellant's gross income of the salary of Juan Eugenio Lo in the sum of P1,875.00 and miscellaneous expenses amounting to P532.00, at the same time maintaining the disallowance of the full amount of P75,855.88 as representation expenses. The revised deficiency assessment is itemized in the letter of the Collector dated March 26, 1955, and is reproduced below:

Net income as per return

P41,596.45

Disallowances:

per investigation:

salaries of officers

P2,375.00

allowed per reaudit

1,875.00

500.00

per investigation and reaudit,

representation expenses

75,855.88

per investigation, miscellaneous

expenses

6,300.00

allowed per reaudit

532.00

5,768.00

Net income subject to tax per reaudit

P123,720.33

Tax due on P123,720.33:

P100,000.00 at 20%

P20,000.00

P23,720.00 at 28%

6,642.00

P26,642.00

Less tax previously assessed and paid

8,325.00

Deficiency tax

P18,317.00

Add: 5% surcharge

915.85

1% monthly interest from 5/31/53 to 4/30/55

4,212.91

Compromise for late payment

40.00

Total amount due on April 30, 1955

P23,485.76

"Appellant has agreed to the disallowance of the sum P500.00 representing the salaries of Felix Go Chan and

Teotimo Tiu Tiam at P250.00 each, and the sum of P5,768.00, representing miscellaneous expenses. The only issue raised in this appeal relates to the deductibility of the sum of P75,855.88 as representation expenses."

Passing upon said issue, which is, also, the only one raised in this appeal, the lower court held that "representation * * * expenses fall under the category of business expenses which" are allowable deductions from gross income if they meet the conditions prescribed by law", particularly section 30 (a) (1) of the National Internal Revenue Code; that, to be deductible, said business expenses must be "ordinary and necessary expenses paid or incurred in carrying on any trade or business"; that those expenses "must also, meet the further test of reasonableness in amount", this test being "inherent in the phrase 'ordinary and necessary' "; that some of the representation expenses claimed by appellant had been evidenced by vouchers or chits, but others were reimbursed "without presentation of supporting papers; that the aforementioned vouchers or chits were allegedly "destroyed when the house of Buenaventura M. Veloso, treasurer of appellant, where the records were kept was burned"; that, accordingly, "it is not possible to determine the actual amount covered by supporting papers and the amount without supporting papers"; that the court should, therefore, "determine from all available data the amount properly deductible as representation expenses"; that "during the period of four (4) years from 1949 to 1952, appellant had gross income, net profits and claimed representation expenses as follows:

Year

Gross Income

Net Profit

Representation
Expenses

1949

P722,135.42

P61,257.53

P83,703.54

1950

451,303.21

33,023.78

10,424.39

1951

420,479.39

41,596.45

75,855.88

1952

425,326.86

34,207.31

63,618.64"

and that "from the above figures, we may infer that the sum of P10,000 may be considered reasonably necessary for entertainment expenses of appellant in 1951, it having claimed a little over the amount in 1950, when its gross income was more than its gross income in 1951 and 1952", and because "it allegedly spent for entertainment purposes in 1948 the sum of P500.00 only." Hence, the lower court modified the assessment of the taxes due from appellant herein the manner set forth in the beginning of this decision.

In its brief, appellant does not assail any of the premises upon which the aforementioned conclusion of the lower court was predicated. What is more, it relied upon, and, even, quoted some of the views expressed in the decision appealed from. Appellant, however, maintains that said court had acted arbitrarily in considering the representation expenses in 1950, not those incurred in 1949 and 1952, in fixing the amount deductible in 1951. This pretense is clearly untenable. It appears: (a) that part of the alleged representation expenses had never had any supporting paper; (b) that the vouchers and chits covering other representation expenses had been allegedly destroyed; (c) that there is no documentary evidence on record of any of the representation expenses in question; (d) that no testimonial evidence has been introduced on any specific item of said alleged expenses; (e) that there is no more than oral proof to the effect that payments had been made to appellant's officers for representation expenses allegedly made by the latter and about the general nature of such alleged expenses; (f) that the gross income in 1950 exceeded the gross income in 1951 and 1952, and (g) that the representation expenses in 1948 amounted to P500 only. Under these circumstances, the lower court was fully justified in concluding that the representation expenses in 1951 should be slightly less than those incurred in 1950.

Upon the other hand, appellant has not even tried to show why its representation expenses in 1951 should be deemed bigger than the amount allowed by the lower court. In fact, the latter had been patently fair and reasonable, if not rather liberal, in allowing appellant to deduct P10,000.00 as representation expenses for 1951, there being absolutely no concrete evidence of the sums then actually spent for purposes of representation. It may not be amiss to note that the explanation to the effect that the supporting paper of some of those expenses had been destroyed when the house of the treasurer was burned, can hardly be regarded as satisfactory, for appellant's records are supposed to be kept in its offices, not in the residence of one of its officers.

Being in accordance with the facts and the law, the decision appealed from is hereby affirmed, with costs against petitioner-appellant, Visayan Cebu Terminal Co., Inc. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Barerra, and Gutierrez David JJ., concur.
Reyes, J.B.L., and Endencia, JJ., took no part.

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