

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PRISCILA ESTATE, INC., AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-18282. May 29, 1964

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b88d737452f2/>

REYES, J.B.L., J.:

Review of the decision of the Court of Tax Appeals in its case No. 334 ordering the petitioner, Commissioner of Internal Revenue to refund to the respondent, Priscila Estate, Inc., a domestic corporation engaged in the business of leasing real estate, the sum of P3,045.19, as overpaid income tax for 1950.

The corporation duly filed its Income tax returns for the years 1949, 1950 and 1951. On 13 June 1952, however, It amended its income tax returns for 1951 and paid the tax corresponding to the assessment made by the petitioner on the basis of the returns, as amended; and on 13 September 1952, the company claimed a refund of P4,941.00 as overpaid income tax for the year 1950 for having deducted from gross income only the sum of P6,013.85 instead of P39,673.25 as its loss in the sale of a lot and building. Thereupon, the Commissioner of Internal Revenue conducted an investigation of the company's income tax returns for 1949 through 1951 and, thereafter, granted a tax credit of P1,443.00 for 1950 but assessed on 3 November 1953 deficiency income taxes of P3,575.49 for 1949 and P22,166.10 for 1951.

The Priscila Estate, Inc. contested the deficiency assessments and when the Commissioner of Internal Revenue refused to reconsider them, the former brought suit to the tax court, which after trial, rendered the decision that in 1961, the Commissioner elevated to this Supreme Court for review.

The first assignment of error refers to the allowance of a deduction in the 1949 income tax returns of the respondent corporation the amount of P11,237.35 representing the cost of a "barong-barong" (a make-shift building), situated at the corner of Azcarraga Street and Rizal Avenue, Manila, which was demolished on 31 December 1949 and a new one built in its place. The petitioner claims that the value of the demolished building should not be deducted from gross income but added to the cost of the building replacing it because its demolition or removal was to make way for the erection of another in its place.

The foregoing argument is erroneous inasmuch as the tax court found that the removal of the "barong-barong", instead of being voluntary, was forced upon the corporation by the city engineer because the structure was a fire hazard; that the rental income of the old building was about P3,730.00 per month, and that the corporation had no funds but had to borrow, in order to construct a new building. All these facts, taken together, belie any intention on the part of the corporation to demolish the old building merely for the purpose of erecting another in its place.

Since the demolished building was not compensated for by insurance or otherwise, its loss should be charged off as a deduction from gross income. (Sec. 30(2), Internal Revenue Code.)

The second to the fifth assignments of error pertain to depreciation.

Particularly contested by the petitioner is the basis for depreciation of Building Priscila No. 3. This building, with

an assessed value of P70,343.00 but with a construction cost of P110,600.00, was acquired by the respondent corporation from the spouses, Carlos Moran Sison and Priscila F. Sison, in exchange for shares of stock. According to the petitioner, the basis for computing the depreciation of this building should be limited to the capital invested, which is the assessed value. On the other hand, the respondent based its computation on its construction cost, revaluing the property on this basis by a board resolution in order to "give justice to the Sison spouses". Since this revaluation would import an obligation of the corporation to pay the Sison spouses, as vendors, the difference between the assessed value and the revalued construction cost as provided in resolution Exhibit F-1 (otherwise the revaluation would make no sense), the corporate investment would ultimately be the construction cost (which is undisputed), and depreciation logically had to be on that basis. That the revaluation may import additional profit to the vendor spouses is a matter related to their own income tax, and not to that of respondent corporation.

The Collector also questions the rates of depreciation which the tax court applied to the other properties, consisting of store and office buildings, houses, a garage, library books, furniture and fixtures and transportation equipment.

Depreciation is a question of fact [1] and is "not measured by a theoretical yardstick, but should be determined by a consideration of the actual facts x x x." (Landon vs. CIR of State of Kansas, 269 Fed. 433(1920), quoted in Sec. 23.32, Mertens, Federal Income Taxation). The petitioner himself on page 26 of his appeal brief, asserts that "what consist of the depreciable amount (six) is elusive and is a question of fact."

Since the petitioner does not claim that the tax court, in applying certain rates and basis to arrive at the allowed amounts of depreciation of the various properties, was arbitrary or had abused its discretion, and since the Supreme Court, before the Revised Rules, limited its review of decisions of the Court of Tax Appeals to questions of law only (Sanchez vs. Commissioner of Customs, 102 Phil., 37; Gutierrez vs. CTA, 101 Phil., 713), the findings of the tax court on the depreciation of the several assets should not be disturbed.

In the sixth and last assignment of error, the petitioner argues that the refund to the respondent is barred by the two-year prescriptive period under Section 306 of the Internal Revenue Code because the action for refund was filed on 5 December 1956 while the respondent's 1950 income tax was paid on 15 August 1951. The petitioner's argument would have been tenable but for his failure to plead prescription in a motion to dismiss or as a defense in his answer. Said failure is deemed a waiver of the defense of prescription (Sec. 10, Rule 9, Rules of Court).

Finding no reversible error in the decision under review, the same is hereby affirmed. No costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Paredes, Regala and Makalintal, JJ., concur.

[1] Cleveland House Brewing Co., 1 BTA 87; Walnut Creek Milling Co., 3 BTA 558; Norman B. Richardson, 9 BTA 875; Bramptori Woolen Co., 18 BTA 1075, rev'd and remanded 45 F(2d) 327 (CCA 1st, 1930), on other issues; see Sec. 23.31, p. 42, Vol. 4, Law of Federal Income Taxation by Mertens.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.