BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
of)
BRIGHT VIEW REALTY CORPORATION)

Appearances:

For Appellant: Warren & Lipson, Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel; Crawford H. Thomas, Associate Tax Counsel; Hebard P. Smith, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Bright View Roalty Corporation to a proposed assessment of additional franchise tax in the amount of $1,466.35 for the income year ended March 31, 1946.

Appellant was incorporated in this State in 1939 and has done business, in California since March of that year. Its sole activity, prior to the income year ended March 31, 1946, was the rental of real property located in Los Angeles, California, All of its stock is held in equal shares by Irving Leibowitz, Marv K. Lang, who is now Mrs, Irving Leibowitz, and Gilbert Leibowitz, brother of Irving Leibowitz,

For the income year ended March 31, 1946, Appellant reported (1) income from its rental property, (2) a gain of $43,446.74 from the sale of real property in California, and (3) a loss of $43,128.00 from the sale of real. property in New York.

The Franchise Tax Board disallowed the deduction of the $43,128.00 loss from the sale of the New York property on the grounds that(1)Appellant did not sufficiently substantiate its claim of loss by sale of property, and (2) even if the loss were admitted it would not be deductible as it was derived from sources outside the State.

The burden of proof to establish a deductible loss and the amount of it is on Appellant. Burnet v. Houston, 283 U. S. 223. Furthermore, unsupported testimony of a taxpayer is insufficient to establish the basis for property claimed to have been sold at a loss. Abraham J. Eder, T.C.M. Dec., Docket 19268, entered February 10, 1950; Maria R. Clear, T.C.M. Dec., Docket 25578, entered November 15, 1951. Upon the record before us, we are of the opinion that Appellant has failed to establish a basis for the New York realty, or a loss from its sale,

The loss claimed by Appellant is alleged to have been realized in February, 1946, by the sale of the New York property for $500. Appellant had acquired legal title to the property from Mary K. Lang, president and stockholder of Appellant, in the same income year, Mary K. Lang received no consideration from Appellant for the transfer and had held the title for only a few days,, having acquired the property in July, 1945, from one Murray Firman. Murray Firman in turn had received title from Irving Leibowite, vice-president and stockholder of Appellant, on April 10, 1940.

Appellant states that it purchased the property for $42,500 from Irving Leibowitzon April 10, 1940, and that Murray Firman and Mary K. Lang, successively, held title to the property in trust for it until the transfer to Appellant on July 9, 1946. No explanation is made as to why the property was held in trust for Appellant, nor have we been presented with copies of any deeds of transfer or trust instruments.

As of May 21, 1945, unpaid tax liens on the property in favor of the City of New York amounted to $19,575.55 and Appellant states that on or about that date it rejected a written offer from the owner of property immediately adjacent to the property in question to purchase it for $300. At an unspecified later date the Bureau of City Collections of the City of New York notified Appellant that three lots, a portion of the property in question, were to be sold at public auction on December 17 and 18, 1945, 'for delinquent taxes amounting to $10,197.18. In February, 1946, Appellant accepted a written offer for purchase of the property from Harry Essner of New York City and a quit claim deed was executed in California and mailed to him in New York. It is alleged that the acceptance of this offer was motivated by the threatened tax sale by the City of New York and by the loss of economic value of the property resulting from the construction of a huge garbage disposal plant in the immediate vicinity. We have not been informed of the date of construction of the garbage disposal plant.

Appellant's balance sheets as of April 1, 1940, and March 31, 1941, filed with its franchise tax return for the income year ended March 31, 1941, disclosed that as of both those dates its cash account was less than $500 and that it had total assets of approximately $25,000, consisting primarily of its rental property in California. Franchise tax returns filed by Appellant for subsequent years also failed to disclose the New York property as an asset, or its purchase price as a liability,

The only evidence offered to substantiate the purchase of the property by Appellant on April 10, 1940, was the testimony of Irving Leibowitz. He testified that he did not receive any consideration from Appellant at the time of purchase, and he could not remember how much money he had received for the property thereafter. He stated that he advanced money to Appellant when it needed it, and as money came to Appellant he lived on it. He made no reference to any written record of payments for the property, If any such record exists we have not been so informed.

Transactions between a closely held corporation and its stockholders are subject to careful scrutiny because of the absence of the adversary element usually present in financial transactions. M. I. Stewart & Co., 2 B.T.A. 737. Considering the relationship of Mr. Leibowitx to the Appellant, the absence on Appellant's balance sheets of any liability to Mr. Lcibowitz, the complete lack of any other written evidence of such an indebtedness, and the testimony of Mr. Leibowitz that he did not know how much money he had received for the property, we conclude that Appellant has failed to establish by clear and convincing evidence that it became indebted to Mr. Leibowitz in the amount of $42,500 in connection with the purchase of the property in question,

Inasmuch as it is our opinion that Appellant has failed to establish a deductible loss, it will be unnecessary to pass on the second ground for disallowance argued by the Franchise Tax Board.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Bright View Realty Corporation to a proposed assessment of additional tax in the amount of $1,466.35 for the income year ended March 31, 1946, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of February, 1954, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Wm. G. Bonelli, Member

J. H. Quinn, Member

________________, Member

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ATTEST: Dixwell L. Pierce, Secretary