

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PENGCHENG SI,)	
)	
Petitioner,)	
)	
v.)	Docket No. 18748-18.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER OF SERVICE OF TRANSCRIPT

Pursuant to Rule 152(b) of the Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the proceedings in the above case before the undersigned judge at Washington, D.C., containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered in favor of the Commissioner as to the deficiency and in favor of petitioner as to the penalty.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
 January 31, 2020

SERVED Jan 31 2020

1 Bench Opinion by Judge David Gustafson

2 January 21, 2020

3 Pengcheng Si v. Commissioner of Internal Revenue

4 Docket No. 18748-18

5 THE COURT: The Court has decided to render the
6 following as its oral Findings of Fact and Opinion in this
7 case. This Bench Opinion is made pursuant to the
8 authority granted by section 7459(b) of the Internal
9 Revenue Code, and Rule 152 of the Tax Court Rules of
10 Practice and Procedure; and it shall not be relied on as
11 precedent in any other case.

12 By a statutory notice of deficiency ("SNOD")
13 dated June 26, 2018 (Ex. 1-J), the Internal Revenue
14 Service ("IRS") determined a deficiency in the Federal
15 income tax of petitioner Pengcheng Si for the year 2015
16 and asserted an accuracy-related penalty under section
17 6662. In the SNOD the IRS disallowed--for lack of
18 substantiation--the deductions for certain business
19 expenses that Mr. Si claimed on Schedule C of his return--
20 specifically, \$13,167 of "legal and professional services"
21 expenses, \$2,501 of "meals and entertainment" expenses,
22 and \$3,456 of "other expenses". (The Commissioner has
23 conceded the penalty, and we do not discuss it further).
24 Mr. Si timely filed a petition with this Court. At trial
25 Mr. Si represented himself, and Ka ("Matt") Tam

1 represented the Commissioner. The issue for decision is
2 whether Mr. Si substantiated his entitlement to deduct the
3 business expenses claimed on Schedule C of his return. We
4 hold for the Commissioner.

5 On the evidence before us, and using the burden-
6 of-proof principles explained below, we find the following
7 facts:

8 FINDINGS OF FACT

9 Mr. Si is a licensed attorney. He is a
10 committed activist who focuses on combating issues of
11 social, political, and human rights violations occurring
12 in China. During 2015 he worked as a writer, an editor,
13 and a liaison for human rights activists and victims who
14 visited Washington, D.C. (Stip. 6.)

15 Business activities

16 In 2015 Mr. Si was the sole owner of a business
17 reported on Schedule C of his income tax return as "Civil
18 Rights Legal". (Stip. 6, Ex. 3-R, p. 13.) However, he
19 reported--and we find that this business had--no gross
20 receipts. Mr. Si was also evidently an employee who
21 received about \$18,000 in wages from an unidentified
22 employer. (We find his wages from employment as an
23 inference from his joint reporting with his wife on Form
24 1040 total wages of \$135,620 (Ex. 3-R, p. 1), of which
25 \$118,500 was apparently attributable to his wife (Ex. 2-R,

1 12th page).)

2 During 2015 Mr. Si generally worked out of his
3 home in Virginia where he and his wife lived. His stated
4 business activities included managing an online magazine,
5 attending various human rights events, and meeting with
6 visiting activists. We cannot determine the exact role or
7 position he held with respect to the online website,
8 because the "About Us" page for the website (Ex. 19-P)
9 that he provided does not list Mr. Si as a publisher,
10 editor, or advisor. We cannot tell whether he did any of
11 these tasks as an employee or as the proprietor of his own
12 business.

13 He also claims to have been a proponent of
14 whistleblower claims for human rights violations--though
15 the record indicates only one claim pending in 2015, a qui
16 tam action that he filed in 2009 against his own former
17 employer under the False Claims Act, pursuant to 31 U.S.C.
18 sec. 3730(b), which did not conclude until 2018. (Ex. 13-
19 J, pp. 1 and 23.) The complaint in that suit (Ex. 14-J)
20 named Mr. Si as the "Relator-Plaintiff" and stated five
21 counts, one of which was a claim for back pay and other
22 relief for himself as damages for his own wrongful
23 termination. He offered no evidence of any other claim or
24 suit brought by or on behalf of any other client or
25 advisee, and we find that none was filed or pending in

1 2015.

2 Expenses

3 With regard to his expenses, Mr. Si maintained
4 some records, but they were largely incomplete or
5 otherwise unreliable. For example, as to meals expenses,
6 he provided receipts and a spreadsheet for meals he
7 claimed were business related; but he acknowledged at
8 trial that there were various errors in his records
9 including mistaken entries for items that were not
10 business related and entries that were incomplete as to
11 amounts paid or the business purpose of the meal or
12 activity. Some of the meals were carryout food that he
13 admits he took home. He claims that the meals were always
14 business-related, but we are unable to find the extent, if
15 any, to which the meals expenses were not simply the
16 personal expense of food for himself and his wife.

17 As to "other expenses" in 2015, Mr. Si incurred
18 some amounts for PACER on-line legal documents, internet
19 service, cell phones and phone cards, an iPhone, and
20 postage. (Stip. 8-15.) Mr. Si provided some records with
21 respect to his "other expenses" including cable and
22 internet expenses that he claimed were used for research
23 and writing in his business. However, these services were
24 provided at the house where he and his wife lived, and it
25 is unclear from his records as to the portion of such

1 expenses that would be attributable to his business use as
2 opposed to his family's personal use at their home. He
3 provided receipts for phone expenses that he claimed were
4 for his business use and for the use of visitors he hosted
5 for his business (Exs. 7-P to 9-P), but he did not show
6 payment of any other amounts for his personal telephone
7 usage, and we find that his telephone and internet
8 expenses were predominantly personal rather than business
9 related, and he showed no basis for allocating any portion
10 of them to his business.

11 As for the "legal and professional services"
12 expenses, Mr. Si paid \$19,737 to an attorney in 2015
13 (Stip. 17) for legal work in the qui tam action. The
14 action underlying those fees was dismissed with prejudice
15 in 2018, and there is no indication of any award or
16 settlement proceeds paid in 2015.

17 2015 tax return

18 Mr. Si and his wife timely filed their joint
19 2015 Federal income tax return. A copy of their tax
20 return transcript shows that on page 1 they reported
21 "Wages, salaries, tips, etc." of \$135,620 and other
22 income. On Schedule A they reported a deduction of \$9,297
23 for unreimbursed employee business expense, which the IRS
24 did not disallow.

25 On Schedule C Mr. Si reported \$0 of gross

1 receipts, sales, or other income. (Ex. 3-R.) He reported
2 \$3,456 of "other expenses", \$2,501 for "meals and
3 entertainment", and \$13,167 for "legal and professional
4 services" (all of which the IRS disallowed) and also other
5 expenses that the IRS did not disallow, including "Office
6 expense" of \$648.

7 SNOD and Tax Court petition

8 The IRS examined Mr. Si's 2015 return by a
9 "Correspondence Examination". (Ex. 15-R.) On June 26,
10 2018, the IRS sent Mr. Si an SNOD for 2015. The SNOD
11 included the determination to disallow--for lack of
12 substantiation--the \$3,456 of "other expenses", the \$2,501
13 for "meals and entertainment", and the \$13,167 for "legal
14 and professional services".

15 Mr. Si timely filed his petition with this Court
16 on September 21, 2018. At the time he filed his petition,
17 Mr. Si resided in Virginia. (Stip. 1.)

18 OPINION

19 I. Applicable legal principles

20 A. Burden of proof

21 The IRS's determination is presumed correct, and
22 taxpayers generally bear the burden to prove their
23 entitlement to any deductions they claim. Rule 142(a)(1).
24 Taxpayers must satisfy the specific requirements for any
25 deduction claimed. See INDOPCO, Inc. v. Commissioner, 503

1 U.S. 79, 84 (1992). Furthermore, taxpayers are required
2 to maintain records sufficient to substantiate their
3 claimed deductions. See sec. 6001; 26 C.F.R. sec. 1.6001-
4 1(a).

5 B. Business expense deductions

6 Pursuant to section 162(a), a taxpayer may
7 deduct "all the ordinary and necessary expenses paid or
8 incurred during the taxable year in carrying on any trade
9 or business". In contrast, except where specifically
10 enumerated in the Code, no deductions are allowed for
11 personal, living, or family expenses. Sec. 262(a).

12 For business expenses relating to meals, section
13 274(k) limits such deductions requiring that the expense
14 not be "lavish or extravagant under the circumstances",
15 and section 274(n) further limits such deductions to fifty
16 percent of the expense.

17 With respect to legal fees, the taxpayer must
18 show that such fees are of a business rather than personal
19 nature in order to be deductible under section 162 as a
20 business expense. Furthermore, section 62(a)(20)
21 addresses the deductibility of legal fees incurred in
22 certain suits, including "a claim of a violation of
23 subchapter III ["Claims against the United States
24 Government"] of Chapter 37 of Title 31, United States
25 Code"--i.e., the provisions under which Mr. Si brought his

1 qui tam action. The deduction for attorney fees in such
2 cases may not exceed the "amount includible in the
3 taxpayer's gross income for the taxable year" on account
4 of the judgment or settlement. Sec. 62(a)(20). In other
5 words, the fees must be deducted in the year that the
6 taxpayer recovered amounts on his claim that were
7 reportable as gross income. If there is no recovery, then
8 such fees may not be deducted.

9 II. Analysis

10 A. Meals

11 We do not find that Mr. Si satisfied his burden
12 of proof for substantiating deductions of his claimed meal
13 expenses. His records for such expenses were incomplete
14 and unreliable, as he effectively acknowledged during
15 trial when he noted various mistakes in his entries. We
16 think that the errors in Mr. Si's spreadsheet and receipts
17 went beyond the inevitable mistakes of any human record-
18 keeping and rendered them unreliable. The records
19 indicated amounts allegedly paid for meals, which amounts
20 do not appear to be lavish or extraordinary; but it is
21 unclear whether such meals were actually related to his
22 business (for which he reported no income in 2015). The
23 spreadsheet Mr. Si provided includes entries for meals
24 that Mr. Si acknowledged were not business related, which
25 greatly affected our perception of the reliability of that

1 spreadsheet for purposes of substantiation. His
2 spreadsheet entries often have no explanation of the
3 business purpose of the meal nor of the business
4 relationship of the other attendees. Furthermore, Mr. Si
5 testified that some of the entries reflected the portion
6 of a meal expense that he bore when the cost had been
7 split among several attendees' credit cards. When a
8 taxpayer purchases carryout food and takes it home for his
9 family, or when coworkers go out to lunch together, split
10 the check, and each bears his own cost, these are not
11 legitimate business meal expenses, and we find it more
12 likely than not that such non-business expenditures
13 predominate on Mr. Si's spreadsheet.

14 B. "Other expenses"

15 For similar reasons, we do not find that Mr. Si
16 satisfied his burden of proof for deducting his claimed
17 "other expenses". Again, his records were incomplete and
18 unreliable. He claimed phone, cable, and internet
19 expenses for his business, but the cable and internet
20 services were provided to his home, and he made no
21 credible showing from which we could discern what portion
22 of the expenses was personal--for him and his family--and
23 what portion, if any, was for his zero-revenue business.
24 With respect to his reported phone expenses, he claims
25 that his phone bills were primarily business related and

1 that he provided phones for visiting activists that he
2 hosted for his business. However, nothing in the records
3 indicates that his business or such activities earned any
4 income, so it is unclear whether any of these expenses are
5 not more properly attributable to his personal use, his
6 wife's personal use, or to the undefined employment that
7 generated the unexplained \$18,000 of income that he
8 reported as wages. We cannot rule out the likely
9 possibility that these expenses were included among the
10 \$9,297 of unreimbursed employee business expense or the
11 \$648 of "Office expense" about which Mr. Si did not
12 testify and which the IRS did not disallow. We hold that
13 he did not substantiate any deductible "Other expenses".

14 C. Legal and professional expenses

15 We cannot allow Mr. Si's claimed deduction for
16 legal expenses paid in 2015. Section 62(a)(20) does not
17 permit deductions in excess of the proceeds includible in
18 gross income from an action brought under the False Claims
19 Act. The record indicates that no proceeds were paid to
20 Mr. Si in 2015 on account of his legal action. Thus the
21 deduction of legal fees is not allowed.

22 Decision will be entered in favor of the
23 Commissioner as to the tax deficiency and in favor of Mr.
24 Si as to the accuracy-related penalty.

25 This concludes the Court's oral Findings of Fact

1 and Opinion in this case.

2 (Whereupon, at 2:12 p.m., the above-entitled
3 matter was concluded.)

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