REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

J. ANTONIO ARANETA,
Petitioner,

versus

C.T.A. CASE NO. 19[illegible]2

4/30/73

MISAEL P. VERA, as Commissioner of Internal Revenue,
Respondent.

x - - - - - - - - - - x

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing against and demanding from petitioner the amounts of ₱1,800.00 and ₱300.00 as fixed taxes and compromise penalty, respectively, for the years 1956 to 1961, for allegedly engaging in business as lending investor pursuant to Section 182(A) (3) (u), in relation to Section 194(u), of the Revenue Code.

Petitioner, during the years involved herein, controlled and managed the following corporations, namely: Mara, Inc., Carmen Zaragoza, Inc., Pacific Farms, Inc., and A & M, Inc., of which he was also an officer, either as their president, vice-president or director. In the words of Rodolfo Serraon, respondent's witness, these corporations are "either his corporations or corporations of the Aranetas." Mara, Inc. was the attorney-in-fact of Nieves Tuason de Barretto and Antonio Tuason, Jr. Petitioner granted loans to these corporations and individuals with interest which he duly reported or declared as income.

Upon investigation conducted by the examiners of the Bureau of Internal Revenue, respondent concluded that during the period from 1956 to 1961, petitioner engaged in business as lending investor without first securing the required privilege tax receipts in violation of Section 182(A)(3)(u) aforementioned. As a consequence thereof, respondent on February 28, 1966, thru the Assistant Revenue Operations Head (Assessment), demanded from petitioner the payment of the total sum of ₱1,800.00 as fixed taxes for the years 1956 to 1961 and the sum of ₱300.00 as compromise penalty. In reply thereto, petitioner, in a letter dated March 9, 1966, informed respondent that he is not engaged in business as lending investor and requested that the case be forwarded to the Appellate Division for review. On October 15, 1968, respondent denied petitioner's appeal and reiterated the demand he had previously made. Hence, this appeal.

The principal issue to be resolved in this appeal is whether or not petitioner is liable for fixed taxes as lending investor for the years 1956 to 1961 pursuant to Section 182(A)(3)(u), in relation to Section 194(u), of the Revenue Code.

While admitting that he had extended loans petitioner alleges that the loans were limited to corporations of which he was either the president or vice-president and to only two individuals whose attorney-in-fact was one of said corporations. He, likewise, asserts that said loans were not made for profit and in fact he did not profit from these. Respondent, on the other hand, anchors his stand on the bare fact that petitioner had habitually lent money for interest.

The pertinent provisions of law upon which respondent anchored the assessment now in dispute provide as follows:

> SEC. 182. Fixed taxes.—(A) On business x x x
>
> x x x x x
>
> (3) Other fixed taxes.— x x x
>
> x x x x x
>
> (u) Lending investors—

1. In chartered cities and first-class municipalities, three hundred pesos;

SEC. 194. Words and phrases defined.--x x x

x x x x x

(u) "Lending investor" includes all persons who make a practice of lending money for themselves, or others at interest.

Note that the fixed tax imposed by section 182(A)(3)(u) clearly purports to be a tax on "business". The plain and ordinary meaning of "business" is restricted to activities or affairs where profit is the purpose or livelihood is the motive (Collector of Internal Revenue v. Manila Lodge No. 761 of the Benevolent & Protective Order of Elks and the C.T.A., 105 Phil. 983). Note further that under section 194, one of the requisites before a person can be classified and taxed as a lending investor is that the lending of the money must be with interest. Interest means profit or gain.

The evidence on record show that petitioner, during the six years here involved, extended loans with interest to the aforesaid four corporations and two individuals; that the corporations were all controlled and managed by him, while one of his corporations, Mars, Inc., acted as the attorney-in-fact of the two individual borrowers; that he never extended loans to the general public; that no mortgage or any other security was required by him from the borrowers; and that the loans and interests earned were duly recorded in his books and reported in his income tax returns; that the rates of interest petitioner charged from the borrowers range from 8% to 9% a year; that petitioner had annually a standing overdraft line or credit line with banks which charged him interest from 8% to 9% a year; that petitioner's cash balance (cash on hand and in banks) amounted only to ₱1,855.41, ₱2,316.14, ₱1,417.36 and ₱1,112.76 for the years 1958, 1959, 1960 and 1961, respectively; that petitioner paid a gross annual interest for his overdraft more than the gross yearly interest he received from the loans except in 1961 when he paid ₱46,809.17 as interest for his overdraft account but received ₱47,753.58 as interest or a difference of ₱944.41 which is insignificant considering the volume of the loans.

Verily, the sums given as loans by petitioner came from petitioner's overdraft account and not from his personal fund because he had small liquid assets, patently insufficient to cover the big loans in question. Respondent's memorandum in effect does not deny petitioner's position that the loans in question came from petitioner's overdraft account. From all appearances, the most reasonable conclusion that one can gather is that petitioner gave the loans as accommodations and what is more, no motive to profit from the transactions was involved since the interest charged by petitioner was just sufficient to pay the interest that he himself paid to the banks. Rather, in the last analysis, the borrowers merely made use of the credit facilities of petitioner with the banks who actually collected the interest through petitioner.

We can very well apply to this case what we said in Asturias Sugar Centrals, Inc. v. Comm. of Int. Revenue, C.T.A. Case No. 983, February 14, 1963, wherein we held the petitioner therein not a lending investor. Therein we said the following:

> x x x With regard to the advances of money which the petitioner gave to its planters, the interest charged was just sufficient to pay the interest that the petitioner itself paid to the bank for the funds as advanced. In effect, the petitioner merely allowed the planters to avail of petitioner's credit with the bank, and it was the latter that actually collected the interest from

WHEREFORE, the decision of respondent appealed from is hereby reversed. Accordingly, petitioner is declared not liable for fixed taxes as lending investor for the years 1956 to 1961. No costs.

SO ORDERED.

Quezon City, April 30, 1973.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge