Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NATIONAL DEVELOPMENT COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 2276

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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12/8/75

D E C I S I O N

Petitioner has appealed from the decision of respondent holding it liable for deficiency income tax amounting to ₱3,386,663.40 covering the fiscal years ending June 30, 1963 to June 30, 1967.

In its income tax returns for the said fiscal years it was made to appear that petitioner sustained losses. However, in the annual reports for said years submitted by its Manager to the National Economic Coordinator, it appears that petitioner derived net profits, as follows:

FY 1962-1963	₱1,283,038.09
FY 1963-1964	3,182,517.24
FY 1964-1965	3,241,870.03
FY 1965-1966	1,612,702.24
FY 1966-1967	1,640,063.07

Based on the profits reported in the said annual reports of the Manager of petitioner, respondent assessed against petitioner deficiency income tax, plus interest, in the aggregate amount of ₱3,386,663.40. Having failed to secure a reconsideration of respondent's decision, petitioner has appealed to this Court.

Petitioner tried to show that it actually sustained losses, instead of profits, in view of the losses sustained in the operation of three ocean-going vessels operated by it through the Maritime Company of the Philippines, which losses were not reflected in the aforesaid annual reports. Respondent refused to recognize said losses. And even if petitioner actually sustained losses in the operation of its ocean-going vessels, such losses were not deductible from petitioner's income from other lines of business as the income of its shipping business was exempt from income tax pursuant to Republic Act No. 1407. It is alleged that where a corporation is exempt from income tax in the operation of one line of business, it is not entitled to deduct losses sustained in such business from income derived from its taxable business, citing Marcelo Steel Corporation v. Collector of Internal Revenue, G.R. No. L-12401, Oct. 31, 1960, 109 Phil. 921.

The question whether or not petitioner

derived profits during the taxable years in question was also ventilated in the Court of Industrial Relations in two cases instituted by the National Development Company Employees and Workers' Union against petitioner for unfair labor practice. In Case No. 4619-ULP, the Court of Industrial Relations found petitioner to have made a profit of ₱3,001,454.11 for fiscal years 1963-64 and 1964-65, and ordered petitioner to pay its employees a bonus of 7% of the net profits in accordance with its collective bargaining agreement with the employees' union. The said decision was not appealed.

In the other case (Case No. 5207-ULP), covering fiscal years 1965-66 and 1966-67, the Court of Industrial Relations also brushed aside petitioner's contention that it was under no obligation to give a bonus to its employees as it sustained losses, and petitioner was ordered, as in the first case, to pay a bonus to its employees of 7% of its net profits in the amount of ₱3,252,766.21. This case was appealed to the Supreme Court which sustained the decision of the Court of Industrial Relations. Said the Supreme Court:

The petitioner's contention that no bonus is available for the simple reason that the company incurred heavy losses, is refuted by the fact that the NDC General Manager, in the company's annual report to the President of the Philippines, reported PROFITS, which the NDC General Manager has not denied.

The report of the Corporate Auditor that the actual financial status of the company, after allegedly deducting taxes and operational expenses, was in a state of loss, based as it is on a different accounting procedure, does not alter the situation. As correctly analyzed by respondent CIR:

> "Admittedly, the annual report of the NDC General Manager is separate and distinct from the audit report of the corporation auditor. This is so because the corporation auditor, as a representative of the General Auditing Office assigned to work in the respondent (herein petitioner) company, is separate and distinct from respondent management. While both reports were claimed to fairly reflect the financial condition of the company and its units and also the results of the operations during the fiscal years ended June 30, 1966 and June 30, 1967, and that they were prepared in accordance with the generally accepted accounting and auditing practices, procedures and principles, the two reports showed, however, different results. The annual reports of the General Manager showed net profits but the audit reports of the corporation auditor indicated net losses.
>
> "The difference lies in the fact that in the ascertainment of the net profit of the company reported out in the NDC General Manager's reports the 'All-Inclusive or Clean Surplus' theory of accounting was applied under which procedure of net income determination the capital gains and extraordinary charges or credits are included in the income statement. In the audit reports

> of the Corporation Auditor the 'Current Operating Concept' of accounting was used under which procedure only the ordinary or normal income is taken up as income during the period of operation but the extraneous or extraordinary income and also expenses pertaining to prior years are credited or debited to surplus account. In other words, the difference is only in the accounting procedure. But essentially the incomes derived from different sources, whether ordinary, normal, extraordinary or extraneous, actually swell and enrich the coffer of the company" (pp. 5-6, Decision; pp. 48-49 rec.). (National Development Company v. NDC Employees and Workers' Union, G.R. No. L-32387, Aug. 19, 1975.)

That petitioner derived profits, instead of losses, during the taxable years in question has been foreclosed by the aforesaid decision of the Supreme Court. It is inconceivable that petitioner derived profits for purposes of the collective bargaining agreement with its employees but sustained losses for purposes of the Income Tax Law.

In view of the foregoing, the decision appealed from must be, as the same is hereby, sustained. No costs.

SO ORDERED.

Quezon City, December 8, 1975

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge