REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CONSOLIDATED MINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 565

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

CONSOLIDATED MINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 578

COMMISSIONER OF INTERNAL REVENUE,
Reppondent.

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

AMENDED DECISION

This is in connection with the motion filed by the petitioner on June 16, 1961, seeking the reconsideration of the decision of this Court dated May 6, 1961, insofar as the same sustains the ruling of the Commissioner of Internal Revenue on (1) the participation of Benguet Consolidated Mining Co. on the net Accounts Receivable at the end of each year; (2) the mine depletion overcharged; (3) the depreciation disallowances; and (4) certain disallowed miscellaneous expenses for the years 1954 and 1956.

Let us first consider the -

PARTICIPATION OF BENGUET CONSOLIDATED MINING CO. ON THE NET ACCOUNTS RECEIVABLE.-

In our decision of May 6, 1961, which is the subject of the present motion for reconsideration, we held that, under paragraphs X and XIV of the operating agreement, Exhibit L, which we quoted in full in said decision, "there is nothing therein which could have prevented the petitioner from deducting at the end of each calendar year the share of Benguet Consolidated Mining Co. on the accounts receivable".

After hearing the oral arguments on the motion for reconsideration of counsel for the petitioner, Atty. Claudio Teehankee, and considering the amount involved in these cases, in justice to the petitioner, we again carefully scrutinized the records of these cases, and we found in the second Supplemental Agreement, Exhibit L-2, made and entered into by and between the petitioner and Benguet Consolidated Mining Co., on October 2, 1941, that paragraph 3 thereof states in part as follows:

> "It being further stipulated, understood and agreed that Pars. IV and X of said Agreement remain in full force and effect; so that when the cash receipts equal the aforesaid expenditures, advances and disbursements, the division of the profits shall be on a share alike basis, it being understood that BENGUET shall always be entitled to retain all cash receipts until fully reimbursed for all its expenditures, advances and disbursements under Par. IV, and that BENGUET and CONSOLIDATED shall share only in the excess of said cash receipts over and above said operating expenditures, advances and disbursements of any nature whatever as may be made in order to carry out the terms of the Agreement and the Supplement thereto. (Underscoring supplied.)

Interpreting and applying the above quoted stipulation embodied in the second Supplemental Agreement, Exhibit L-2, to the case at bar, which we believe is controlling being the latest agreement of the parties to the operating contract, we are of the opinion and so hold that the petitioner's stand is well taken. Notwith-

244

standing the fact that the petitioner files its income tax returns on the basis of accrued income and expenses, it need not accrue the share of Benguet Consolidated Mining Co., in the outstanding accounts receivable at the end of each year for the reason that no such expense has as yet been incurred.

> "Under the accrual basis, usually as soon as legal title has passed to buyer or seller and the legitimacy of the transaction is recognized, record of it is made on the books. Thus the liability for all purchases--whether of assets or services--is entered on the books as soon as the transactions have been checked and their propriety acknowledged. Similarly, as soon as goods or services have been sold, and usually, have been delivered, i.e., as soon as a legally enforceable claim against the purchaser or customer has arisen, formal entry of the transaction is made on the books. Under this method of accounting, the books are at all times more complete . . ." (Wixon, Accountants' Handbook, 4th Edition, p. 5.10, citing Kester, Advanced Accounting; underscoring supplied.)

At the end of each calendar year, Benguet Consolidated Mining Co., as operator, has not earned its share on the uncollected accounts receivable because their operating contract, as supplemented by Exhibit L-2, expressly provides that the operator shall share only on the excess of the cash receipts, or collections, over the disbursement. So that, only after the accounts receivable are actually collected, and the expenditures pertinent thereto are deducted, shall Benguet Consolidated Mining Co. have any claim on them. If Benguet Consolidated Mining Co. has no legally enforceable claim on the outstanding accounts receivable at the end of each calendar year, it follows that there is no need for the

245

petitioner to set up as an accrual, or an accrued expense, Benguet Consolidated Mining Co.'s participation therein.

We wish to state, however, that, forgetting for a moment the above quoted provisions of the second Supplemental Agreement of October 2, 1941, Exhibit L-2, we still entertain the same view which we expressed in our original decision of May 6, 1961, with regard to the interpretation and construction of paragraphs X and XIV of Exhibit L. Said Exhibit L speaks of "gross income" which may include accounts receivable, while Exhibit L-2 mentions only "cash receipts" which can only mean actual collections in money, and not in any way include accounts receivable.

And we also wish to add that the petitioner failed to point out paragraph 3 of the second Supplemental Agreement as its source of authority in not deducting in its income tax returns the participation of Benguet Consolidated Mining Co. in the accounts receivable at the end of each year, and on the contrary, the petitioner consistently relied solely on said paragraphs X and XIV of Exhibit L. (Pp. 13-14, Memorandum for the Petitioner; pp. 86-87, CTA rec. in Case No. 565; pp. 18-19, Motion for Reconsideration; pp. 189-190, CTA rec. in Case No. 565.)

With regard to the other grounds relied upon by the petitioner in its motion for reconsideration, we find the same without merit. However, as correctly stated by the petitioner, a clerical error was committed in the itemization of the total amount of ₱2,646,878.44 on page 9 of the decision. The item "Cost of Masinloc Chromite Field . . . ₱2,515,000.00" was inadvertently omitted. But this omission did not in any way affect our finding that the total amount depletable is ₱2,646,878.44.

In resume, the petitioner is liable for the payment of the amounts of ₱79,812.93, ₱51,528.24, and ₱71,392.82, as deficiency income taxes for the years 1953, 1954 and 1956, or a total sum of ₱202,733.99, re-computed as follows:

1953

Net income as per audited return		₱5,193,716.89
Unallowable deductions & additional incomes:		
Depletion overcharged	₱191,184.19	
Depreciation adjustment ...	93,862.96	
Total adjustments		285,047.15
Net income as per investigation		₱5,478,764.04
Income tax due thereon		₱1,526,053.93
Less amount already assessed		1,446,241.00
DEFICIENCY TAX DUE		₱ 79,812.93

1954

Net income as per audited return		₱3,320,307.68
Unallowable deductions & additional incomes:		
Depletion overcharged	₱158,669.58	
Depreciation adjustment ...	11,878.12	
Miscellaneous expenses	13,481.20	
Total adjustments		184,028.90
Net income as per investigation		₱3,504,336.58

247

Income tax due thereon	₱ 973,214.24
Less amount already assessed	921,686.00
DEFICIENCY TAX DUE	₱ 51,528.24

1956

Net income as per audited return		₱11,504,483.97
Unallowable deductions & additional income:		
Depletion overcharged ...	₱237,386.10	
Miscellaneous expenses ..	17,590.00	
Total adjustments		254,976.10
Net income as per investigation		₱11,759,460.07
Income tax due thereon		₱ 3,284,648.82
Less amount already assessed		3,213,256.00
DEFICIENCY TAX DUE		₱ 71,392.82
TOTAL DEFICIENCY TAX DUE		₱ 202,733.99

WHEREFORE, petitioner Consolidated Mines, Inc., is hereby ordered to pay the respondent Commissioner of Internal Revenue, the amounts of ₱79,812.93, ₱51,528.24, and ₱71,392.82, as deficiency income taxes for the years 1953, 1954 and 1956, respectively, or the total sum of ₱202,733.99. If not paid in full within thirty (30) days from the date this amended decision becomes final and executory, the petitioner shall pay a surcharge of five per cent (5%) of the unpaid amount, plus interest at the rate of one per cent (1%) a month, computed from the date this amended decision becomes final, until it is paid. No costs.

SO ORDERED.

Manila, August 7, 1961.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

249