REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ASTURIAS SUGAR CENTRAL, INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 983

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue, dated October 28, 1960, assessing against and demanding from the petitioner, Asturias Sugar Central, Inc. the amounts of ₱12,331.96 as sugar central operator's deficiency percentage tax and surcharge, covering the period from 1955 to June 30, 1959, and ₱1,800.00 as lending investor's fixed tax for the years 1954 to 1959, or a total sum of ₱14,131.96. (Exhs. M, O & Q, pp. 63, 78 & 85, BIR rec.)

It appears that the petitioner is engaged in the manufacture of centrifugal sugar from sugar cane produced by about three hundred (300) planters who are under milling contracts with the former. Petitioner's mill is situated in Barrio Sto. Niño, Municipality of Dumalag, Province of Capiz, near the Philippine Railway Station known as San Juan. After the sugar cane is processed in petitioner's sugar central, the centrifugal sugar is bagged and stored in its mill warehouse which is adjacent to the sugar central. From said mill warehouse, the sugar is later loaded on cars of the Philippine Railway Company, at San Juan, Dumalag, Capiz, and brought to petitioner's subsidiary warehouse in Iloilo City where the sugar is marketed or shipped to other markets. (t.s.n. pp. 5-11)

For the period under review, the petitioner paid the total sum of ₱268,861.86 as sugar central operator's percentage tax under Section 189 of the Tax Code. (Exhs. I, I-1 to I-28; See Working Paper, p. 51, BIR rec.) As there were no buyers of the sugar at the mill site or at San Juan, Dumalag, Capiz, the petitioner used as a basis for computing the percentage tax the selling prices of the sugar in Iloilo City, minus the freight charges and handling expenses in transporting the sugar from the mill warehouse in Dumalag, Capiz to its subsidiary warehouse in Iloilo City.

It also appears that the petitioner had been advancing to its regular employees, funds for their subsistence, education and emergency needs in compliance with its collective bargaining agreement with them, and to its seasonal employees, loans in rice during the non-milling months. The petitioner also advanced money for the expenses of planting and growing the sugar cane of its planters and also for the freight in trans-

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porting the share of those planters to Iloilo City. It did not collect interest on the money advanced to its employees but charged interest at the rate of 6% to 8% per annum on the advances to its planters because it also paid to the bank interest on the money so advanced. (t.s.n., pp. 30-36)

The issues to be decided in this appeal are as follows:

(1) Whether or not the freight charges and handling expenses incurred by the petitioner in transporting the sugar in question from its mill warehouse in Dumalag, Capiz, to its subsidiary warehouse in Iloilo City should be deducted from the actual Iloilo City selling prices in computing the sugar central operator's percentage tax under Section 189 of the Tax Code?; and,

(2) Whether or not the petitioner may be classified as a lending investor within the meaning of Section 182 of the Tax Code and therefore subject to the fixed tax prescribed by said section?

The pertinent provisions of Section 189 of the National Internal Revenue Code provide as follows:

> "Sec. 189. Percentage tax upon proprietors or operators of rope factories, sugar centrals, rice mills, coconut oil mills, corn mills, and desiccated coconut factories. - Proprietors or operators of x x x x x sugar centrals, x x x x shall pay a tax equivalent to two per centum of the gross value in money of all the xxxx sugar, x x x x manufactured or milled by them, including the by-products of the raw materials from which said articles are produced or manufactured,

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> such tax to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse: x x x x" (Underscoring supplied.)

Interpreting Section 189 of the Tax Code, and as applied to the case at bar, the bases expressly prescribed by law for computing the percentage tax upon proprietors or operators of sugar centrals are either: (1) the actual selling price of the sugar at the time it leaves the factory or mill warehouse, i. e., if the sugar is already sold at the time it is removed therefrom; or (2) the market value of the sugar, if it is withdrawn for some other reason. As the Supreme Court has held, the text of Section 189 of the Tax Code indicates that actual sale of the product is not essential to the accrual of the tax, since the tax is "to be based on the actual selling price or market value of these articles at the time they leave the factory or mill warehouse" without taking into account the reason why the article is withdrawn. (Collector of Internal Revenue vs. Central Azucarera de Tarlac, G. R. No. L-11760, July 31, 1958)

In the present case, the sugar in question was not actually sold when it left petitioner's sugar central or mill warehouse. Hence, the only possible legal basis for computing the miller's percentage tax was it's "market value" when it left the sugar central or mill warehouse of the petitioner in Dumalag, Capiz.

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Inasmuch as there is no proof of the actual market value of the sugar when the same left the sugar central or mill warehouse, and on the contrary, the evidence shows that there were no buyers of sugar in commercial quantities in the town of Dumalag, Capiz, we believe and so hold that the petitioner correctly deducted the freight charges and handling expenses incurred in transporting the sugar in question from its mill warehouse in Dumalag, Capiz, to its subsidiary warehouse in Iloilo City from the actual Iloilo City selling prices in computing the 2% miller's tax. To hold otherwise and include the freight charges and handling expenses as part of the taxable basis for computing the miller's tax, as insisted by the respondent, would be tantamount to assessing the tax on the basis of the sugar's market value in Iloilo City, and not in Dumalag, Capiz, and would therefore be contrary to law. To our mind, the petitioner in the case at bar, computed its 2% miller's tax liability in accordance with law, using as the basis the fair and equitable market value of the sugar at the time it left it's mill warehouse in Dumalag, Capiz.

Coming now to the second issue, i.e., whether or not the petitioner was a lending investor during the years 1954 to 1959, Section 194 (u) of the National Internal Revenue Code defines a "lending investor" as follows:

"Sec. 194. Words and phrases defined. - In applying the provisions of this title, words and phrases shall be taken in the sense and extension indicated below:

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

Note that 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. And to our mind, the word interest means profit or gain, for just like any other kind of business, the business of a lending investor must be conducted for profit or gain in order to be taxable.

In the instant case, when the petitioner advanced funds or supplied rice to its employees, it did so merely to comply with one of the terms of its collective bargaining agreement and did not charge nor collect any interest on said loans to its employees. 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 so 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 the planters thru the petitioner.

Moreover, from the facts as proven during the hearing of this case, the advancing of money by the petitioner to its employees and planters may be considered as merely incidental to its business of operating a sugar central and therefore not taxable as an independent business in itself.

> "When a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business." (Standard-Vacuum Oil Co. vs. Antigua, G.R. No. L-6931, April 30, 1955; 51 OG 2405, May, 1955)

> " x x x where something is done as a mere incident to, or as a necessary consequence of, the principal business, it is not ordinarily taxed as an independent business in itself; and that what is usually taken as essential is the main activity in which the taxpayer is engaged. All the various transactions tending to better accomplish the principal end in view must be treated as merely incidental to the principal purpose of the business, in the absence of circumstances evidencing a different intent. (City of Manila vs. Fortune Enterprises, Inc., G.R. No. L-14096, July 26, 1960)

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby reversed. We find and so hold that the petitioner is <u>not</u> liable for a deficiency miller's percentage tax for the years 1955 to 1959, nor for a lending investor's fixed tax for the years 1954 to 1959. No costs.

SO ORDERED.

Manila, Philippines, February 14, 1963.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge