REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

TAN TIONG BIO, YU KHE THAI,
LIM SHUI TY, ALFONSO Z. SYCIP,
SY EN, GO GIAP, DEE HONG LUE,
SY SENG TONG, DAVID SYCIP,
and/or "CENTRAL SYNDICATE",
Petitioners,

June 30, 1959

- versus -

C.T.A. CASE NO. 9

BUREAU OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is an appeal from a decision of the Collector (now Commissioner) of Internal Revenue which was originally filed before this Court on September 8, 1954, by the Central Syndicate, as petitioner-appellant, a corporation organized under the laws of the Philippines and admitted by both parties to be no longer in existence at the time the appeal was brought to this Court, its term of existence under its Articles of Incorporation, Exhibits A and A-1 (p. 60, CTA rec.), having expired and its assets having been liquidated as far back as August 15, 1948.

The decision appealed from which is contained in two separate letters, Annexes B and C (pp. 6-8, CTA rec.) of the Collector of Internal Revenue to the petitioner-appellant Central Syndicate, through its Certified Public Accountant, W. Sycip & Co., both dated January 4, 1952, denied the claim for refund of the petitioner-appellant in the amount of ₱1,103.28 as alleged excess payment of sales tax on surplus goods purchased from the Foreign Liquidation Commission, and in turn demanded from the petitioner-appellant the additional sum of ₱33,797.88 as deficiency sales tax and surcharge, exclusive of the sum of ₱300.00 as penalty allegedly for violation of Sections 183 and 186 of the National Internal Revenue Code.

On October 28,1954, after the respondent-appellee Bureau of Internal Revenue (should be Collector or Commissioner of Internal Revenue) had filed its answer, the petitioner-appellant, through counsel, in a written motion (pp. 26-31, CTA rec.) moved for the resolution of the preliminary question of prescription, one of the main issues now still being pressed before this Court. In a resolution dated November 2, 1954 (p. 33, CTA rec.), this Court decided to defer the resolution of said motion on the question of prescription until after the trial of the case on the merits so that all the issues, legal and factual, could be resolved at one time in its final decision on the merits with all the facts before it.

Pending the trial of this case on the merits, another incident was provoked, this time by the respondent-appellee with the filing on November 5, 1954 of a motion (p. 34, CTA rec.) to require petitioner-appellant Central Syndicate, to file a surety bond in the sum of ₱33,797.88 in order to insure the collection of the deficiency sales tax and surcharge demanded, pursuant to Section 11 of Republic Act No. 1125. After hearing both sides, this Court in a resolution dated December 1, 1954 (pp. 52-53, CTA rec.) resolved to deny the last mentioned motion of respondent-appellee on the ground that with the very admission of the latter and its evidence, Exhibits A and A-1 (p. 60, CTA rec.), that the petitioner-appellant Central Syndicate had ceased to exist as a corporation and its assets liquidated as far back as August 15, 1948, whatever order this Court would now issue against the petitioner-appellant would be against a non-existing entity with no juridical personality and, therefore, impossible of enforcement.

Following the cue, the respondent-appellee, on December 7, 1954, filed a motion to dismiss (pp. 57-69, CTA rec.) the appeal interposed by the petitioner-appellant Central Syndicate for lack of capacity to sue under Section 1(c), Rule 8, of the Rules of Court. The petitioner-appellant, on December 15, 1954, filed its opposition (pp. 69-73, CTA rec.) to the motion to dismiss upon the grounds (1) that the motion did not adequately build a case for dismissal, and (2) that the resolution of the said motion should proceed along the same line pursued by the Court in resolving the motion for resolution of the preliminary question of prescription. After hearing both sides, this Court, in a resolution dated January 25, 1955 (pp. 92-93, CTA rec.), resolved to dismiss the appeal for lack of capacity to sue of the petitioner-appellant under Section 1, Rule 3, of the Rules of Court which provides that "Only natural or juridical persons may be parties in a civil action."

Not satisfied with our order of dismissal, the petitioner-appellant, on February 18, 1955, (p. 97, CTA rec.) appealed the same to the Supreme Court.

The Supreme Court, in a decision promulgated on October 23, 1956 (G. R. No. L-8800) (pp. 141-145, CTA rec.) set aside our order of dismissal with the instruction to permit the substitution as parties-appellants of the former officers and directors of the defunct Central Syndicate "who may be (and in fact are) held personally liable for the unpaid deficiency assessments made by the Collector of Internal Revenue against the defunct Syndicate", and to proceed with the hearing of the appeal on its merits.

Petitioner-appellant's counsel has never moved this Court, after the case was remanded to it by the Supreme Court for trial on the merits, for the substitution as parties-appellants of the officers and directors of the defunct Central Syndicate as suggested by the Supreme Court in its decision of October 23, 1956 (G.R. No. L-8800) and in compliance with Section 2, Rule 17, of the Rules of Court. Instead, Central Syndicate's counsel, took it upon himself motu propria to make the necessary substitution in the "Petition for Review" (pp. 98-106, CTA rec.) which he filed before the Supreme Court on February 18,1955, naming Messrs. Tan Tiong Sio, Yu Khe Thai, Lim Chui Ty, Alfonso Z. Sycip, Sy En, Co Giap, Dee Hong Lue, Sy Seng Tong, David Sycip, and/or "Central Syndicate" as petitioners-appellants.

The Supreme Court, in its decision of October 23, 1956 (G.R. No. L-8800) setting aside our order of dismissal of January 25, 1955, adopted the title given by petitioners-appellants' counsel in his "Petition for Review" filed before said Court on February 18, 1955, (pp. 98-108, CTA rec.) with Tan Tiong Bio, et al., as appellants. We take it, then, that notwithstanding the failure on the part of the petitioners-appellants' counsel to file up to now a formal motion for substitution of petitioners-appellants as suggested by the Supreme Court in its decision of October 23, 1955 (G.R. No. L-8800) and as required under Section 7, Rule 17, of the Rules of Court, we are now in a position to assume jurisdiction over the persons and properties of the NINE (9) persons listed in the title of the "Petition for Review" (p. 98, CTA rec.) by their counsel before the Supreme Court on February 18, 1955, and to decide the respective liability or liabilities of said officers and directors of the defunct Central Syndicate for the unpaid deficiency sales tax assessment now before us on appeal. (Guyugan vs. Dizon, 79 Phil. 80.) This seems to be so from the ratio decidendi of the Supreme Court in its decision of October 23, 1956 (G.R. No. L-8800) to the effect "that the respondent Court of Tax Appeals should have allowed the substitution of its (Central Syndicate's) former officers and directors as parties-appellants, since they are proper parties in interest in so far as they may be (and in fact are) held personally liable for the unpaid deficiency assessments made by the Collector of Internal Revenue against the defunct Syndicate" (p. 144, CTA rec.).

We also note that the Supreme Court in its decision setting aside our order of dismissal of January 25, 1955, for lack of capacity to sue of the defunct Central Syndicate, placed the blame on this Court for not having "allowed the substitution of its (Central Syndicate's) former officers and directors as parties-appellants x x x" (p. 144, CTA rec.). In fairness to this Court, we would like to state, that this matter of substitution of parties was never raised by the parties in a formal motion as required by the Rules of Court. It was never prayed for in the "Motion to Dismiss" (pp. 57-59, CTA rec.) of respondent-appellee, dated December 6, 1954, nor in the "Opposition to Motion to Dismiss" of the petitioner-appellant of December 15, 1954. Hence, we simply did not grant and allow what was never asked in any duly filed formal motion. The matter of substitution of parties was raised for the first time ex parte by counsel for the Central Syndicate in his "Appellant's Reply Memorandum to the Motion to Dismiss" (pp. 87-91, CTA rec.).

One will note in the "Opposition to Motion to Dismiss" of petitioner-appellant Central Syndicate that its counsel has conveniently and astutely evaded the question of substitution of parties with all kinds of round-about arguments, knowing full well that the Central Syndicate, against whom the assessment was erroneously directed and in whose name the appeal was brought to this Court was by then a non-existing entity with no juridical capacity to sue and be sued and no assets to speak of and therefore whatever decision we would render against it would be purely academic and impossible of enforcement. On the other hand, it would not have been to the best interest of the officers and directors of the Central Syndicate for their counsel to take the initiative by precipitating the matter of making them parties-appellants thus exposing them to liability in their personal capacity when respondent-appellee's counsel has never prayed this Court in a formal motion for such substitution, the respondent stubbornly refusing to admit and rectify the error committed by it in having assessed a corporation that had long been dissolved (p. 81, CTA rec.). Thus, in his "Opposition to Motion to Dismiss", counsel for the Central Syndicate has conveniently side-stepped the matter of substitution by adhering to the diversionary theory "that the dissolution of a corporation does not free its property from liability for payment of income taxes or any other debts" (p. 70, CTA rec.) and that "we are not arguing at this time that the stockholders and/or directors of the Central Syndicate should be held liable for the tax now subject of the disputed assessment x x x" (p. 69, CTA rec.).

Let us now proceed to consider the case on its merits.

It appears that on July 5, 1946, the United States of America, acting through the Foreign Liquidation Commissioner, sold surplus goods to one Dee Hong Lue, under Sales Contract No. W-ANL (PM-1) - 5328, (pp. 23-29 BIR rec.) for a consideration of ₱1,250,000.00. Forty-one (41) days later, viz., on August 15, 1946, Central Syndicate was duly registered as a corporation with the Securities and Exchange Commission with Dee Hong Lue as one of the incorporators subscribing the amount of ₱20,000.00 of the authorized capital stock of ₱500,000.00 and paying the amount of ₱5,000.00 on his subscription at the time of incorporation (Annex "A", Motion to Dismiss, pp. 60-65, CTA rec.). Five (5) days later, viz., on August 20, 1946, Dee Hong Lue allegedly re-sold the same surplus properties which were purchased from the Foreign Liquidation Commissioner, to the newly incorporated Central Syndicate for the same price of ₱1,250,000.00, with the latter assuming Dee Hong Lue's obligation to pay the 3-1/2% sales tax on the said surplus goods. (Exhibit "13", p. 66, BIR rec.)

On October 19, 1946, Central Syndicate, through its General Manager, David Sycip, sent a letter (par. 8, pp. 1 and 2, CTA rec.; Annex A, pp. 4 and 5, CTA rec.) to the respondent Commissioner advising the latter that it purchased from Dee Hong Lue the entire stock of surplus properties (commonly referred to as the "Mystery

File") which the said Dee Hong Lue had bought from the Foreign Liquidation Commission; that it assumed Dee Hong Lue's obligation to pay the 3-1/2% sales tax on said surplus goods; and that therefore, it was remitting the sum of ₱43,750.00 for and in the name of Dee Hong Lue, as deposit to answer for the 3-1/2% sales tax collectible on the sales price between Dee Hong Lue and Central Syndicate in the amount of ₱1,250,000.00, with the understanding that said sales tax liability would be adjusted after the determination of the exact consideration of the sale.

On November 26, 1947, the United States Government actually refunded the amount of ₱31,522.18 to Central Syndicate by way of a reduction of the purchase price, (par. 7, Appeal; par. 7, Answer) and on January 31, 1948, Central Syndicate requested the respondent for the refund of ₱1,103.28 representing alleged excess payment of sales tax due to the adjustment and reduction of the purchase price in the aforesaid amount of ₱31,522.18. (Par. 8, Appeal; par. 8, Answer.)

On January 4, 1952, the respondent Commissioner denied the request of the Central Syndicate for refund of the amount of ₱1,103.28 (p. 9, BIR rec.) and on the same date under a separate letter the former also assessed and demanded from the corporation the sum of ₱33,797.88 as deficiency sales tax inclusive of surcharge and exclusive of the amount of ₱300.00 as compromise penalty (Exhibit 4, pp. 6-7, BIR rec.).

The case is now before us on appeal only with respect to the deficiency assessment totalling ₱34,097.88 inclusive of surcharge and compromise penalty, it appearing from respondent-appellee's own computation that the amount of ₱31,522.18 which was refunded to the petitioner-appellant by the Foreign Liquidation Commission was actually considered and deducted from the purchase price of ₱1,280,000.00 and the sales tax computed on the adjusted amount (Exhibit A, pp. 6-7, BIR rec.).

As correctly pointed out by both parties, the present appeal narrows down to two main issues:

> (1) Whether or not the right of the respondent to assess the deficiency sales tax in question has already prescribed? and
>
> (2) Whether or not the Central Syndicate (now its officers and directors) was the entity liable for the sales tax on the surplus goods in question under Section 186 of the Tax Code?

Since the answer to the first query on prescription will have to depend on our findings of facts and conclusion with respect to the second, we shall first proceed to resolve the latter.

It is now well-established by jurisprudence that original purchasers in the Philippines of surplus goods from the defunct Foreign Liquidation Commission, (hereinafter to be referred to as FLC for short) a United States Government agency, are <u>importers</u> within the contemplation of Sections 183 to 186 of the National Internal Revenue Code and as such <u>importers</u>, are therefore required to pay the percentage tax prescribed in the aforesaid sections of the Tax Code on their original sales of the imported goods to the public. (P.M.P. Navigation Co. vs. Bibiano L. Meer, G. R. No. L-4621, Mar. 24, 1953; Saura Import & Export Co., Inc. vs. Bibiano L. Meer, G. R. No. L-2927, Jan. 26, 1951; Go Cheng Tee vs. Bibiano L. Meer, G. R. No. L-2825, July 17, 1950.)

The petitioners contend that the original purchaser of the surplus property, commonly known as "Mystery Pile", from FLC was Dee Hong Lue in his own right as appearing in the Sales Contract No. M-ANL (PA-1) - 5328, dated July 5, 1946 (pp. 23-29, BIR rec.) and, therefore, as such importer of the goods, the said person should be the one to pay the percentage tax prescribed in Section 186 of the Tax Code based on his selling price of the articles to the Central Syndicate in the amount of ₱1,250,000.00. In support of their contention, the petitioners presented the contract, Exhibit 13 (p. 66, BIR rec.) purporting to show that Dee Hong Lue sold on August 20, 1946, the same surplus goods which he had acquired from the FLC on July 5, 1946, to the Central Syndicate in the amount of ₱1,250,000.00, which is exactly the same amount which the said Dee Hong Lue had paid to the FLC. On October 19, 1946, the Central Syndicate remitted to the respondent the sum of ₱43,750.00 in payment of Dee Hong Lue's sales tax liability on the basis of 3-1/2% of the alleged selling price of the latter to the Central Syndicate in the amount of ₱1,250,000.00.

On November 28, 1947, the United States Government refunded the amount of ₱31,522.18 to the Central Syndicate by way of a discount or reduction in the agreed price of ₱1,250,000.00. On January 31, 1948, the Central Syndicate requested the respondent for the refund of ₱1,103.28 representing alleged excess payment, due to the adjustment and reduction of the purchase price in the aforesaid amount of ₱31,522.18. The respondent does not question the fact that there was indeed such a reduction or discount in the selling price by the FLC, and in its computation of petitioners' deficiency sales tax liability now in question, has credited the Central Syndicate with the amount refunded (see Annex C, pp. 7-8, CTA rec.).

After due investigation, the respondent on January 4, 1952, assessed the Central Syndicate a deficiency sales tax and surcharge in the amount of ₱33,797.88, exclusive of the sum of ₱300.00 as penalty based on the following findings: that in acquiring the surplus goods in question from the FLC, Dee Hong Lue acted not as original purchaser thereof but as mere agent of the Central Syndicate; that for the purpose of exacting the sales tax prescribed in Section 186 of the Tax Code, the original purchaser of the surplus goods from the FLC was the Central Syndicate and not Dee Hong Lue; that the contract, Exhibit 13 (p. 66, BIR rec.) purporting to show that Dee Hong Lue, as vendor, sold the same surplus goods to Central Syndicate, as vendee, for a consideration of ₱1,250,000.00, is a simulated sale intended to evade payment of a greater amount of sales tax; and that since the Central Syndicate was the original purchaser or "importer" of the goods, its gross sale to the public conservatively estimated by respondent to be ₱1,447,551.65 or a gross profit of 18.8% or ₱229,073.83, should be the basis in the computation of the 3-1/2% and 5% sales tax prescribed in the Tax Code.

The petitioners do not question the mathematical computation of the respondent and the basis of 18.8% estimated profit on the acquisition price in arriving at the conclusion that the Central Syndicate is liable for deficiency sales tax and surcharge in the amount of ₱33,797.88; that the corporation was able to realize a gross sale conservatively estimated by respondent to be ₱1,447,551.65 when it sold the surplus goods in question to the public, and that it was able to realize in the sale a net profit of ₱229,073.83.

The main cause of argument is the finding of respondent that Dee Hong Lue was not in his own right a <u>bona fide</u> purchaser of the goods acquired from FLC but the Central Syndicate and that the contract, Exhibit 13 (p. 66, BIR rec.) purporting to show that Dee Hong Lue sold the surplus goods in question to the corporation for ₱1,250,000.00, was a fictitious sale willfully made to evade payment of a greater amount of sales tax than what was actually paid.

In the light of the overwhelming evidence presented by respondent in support of its findings on this score, we find no reason whatsoever to reverse the same.

Let us examine and analyze one by one the evidence for the respondent in support of its findings.

Exhibit "38-A" for the respondent (p. 178, BIR rec.) shows that as early as July 23, 1946, or before the organization and incorporation of Central Syndicate, Mr. David Sycip, who was subsequently appointed General Manager of the corporation, together with Messrs. Sy En alias Sy Seng Sui (one of the incorporators of Central Syndicate), Serge Gordeef and Chiu Siu Bun (an employee of the same corporation), for and in the name of Central Syndicate then in the process of organization, went to Leyte to take over the surplus properties sold by the FLC to Dee Hong Lue, which the latter held in trust for the corporation. Exhibit 38-A, which is a certificate issued by no less than David Sycip himself who was subsequently appointed General Manager of the corporation admits in express terms the following "x x x the surplus property sold by the Foreign Liquidation Commission to Dee Hong Lue (and held in trust by the latter for the Syndicate x x x." (Emphasis ours.) We give full weight and credence to the adverse admissions made by David Sycip against the petitioners as appearing in his certificate, Exhibit 38-A (p. 178, BIR rec.) considering that at the time he made them, he was a person jointly interested with the petitioners in the transaction over which there was yet no controversy over any sales tax liability. (Secs. 11 and 33, Rule 123, Rules of Court; Clem vs. Forbeso, Tex. Cir. App. 10 S.W. ed 223; Street vs. Masterson, Tex. Cir. App. 277 S.W. 407.)

Exhibit "39" for the respondent, (pp. 184-187, BIR rec.) which is a letter of Mr. Yu Khe Thai, President, Director and biggest stockholder of Central Syndicate (Exhibit A, pp. 60-65, CTA rec.) dated September 17, 1946 and addressed to the Commanding General, AFWESPAC, Manila, contains the following categorical admissions which corroborate the admissions made by David Sycip: that the so-called Leyte "Mystery Pile" surplus properties were owned by Central Syndicate by virtue of a purchase from the FLC, effected in the name of Dee Hong Lue on July 5, 1946, inasmuch as Central Syndicate was then still in the process of organization; that Dee Hong Lue held the said surplus properties in trust until the mere formal turnover to the corporation on August 20, 1946, when the corporation had already been organized and incorporated under the laws of the Philippines; and that on July 23, 1946 viz., twenty-two (22) days before the incorporation of Central Syndicate on August 15, 1946 "our General Manager, Mr. David Sycip accompanied by one of our directors, Mr. Sy En, arrived in Leyte to take over the properties".

Before passing on to the rest of the evidence supporting the findings of respondent, we would like to call attention to this significant detail. It is stated in the letter, Exhibit 39 (pp. 184-187, BIR rec.) of Mr. Yu Khe Thai that "on July 23, 1946, our General Manager, Mr. David Sycip, accompanied by one of our directors, Mr. Sy En, arrived in Leyte to take over the properties." We ask: why was there such a hurry on the part of the promoters of Central Syndicate in taking over the surplus properties when the formal agreement, Exhibit 13 (p. 66, BIR rec.), purporting to be a contract of sale of the "Mystery Pile" between Dee Hong Lue, as vendor, and the Central Syndicate, as vendee, for the amount of P1,250,000.00, was effected twenty-eight (28) days later viz., on August 20, 1946. Is this not another clear and unmistakable indication that from the very start, as is the theory of the respondent, the real purchasers of the "Mystery Pile" from the FLC and as such the "importers" of the goods, were the Central Syndicate and/or the group of big financiers composing it before said corporation was incorporated on August 15, 1946; and, that Dee Hong Lue acted merely as agent of these persons when he purchased the pile from the FLC? As a general rule, one does not exercise all the acts of ownership over a property especially if it involves a big amount until after the documents evidencing such ownership are fully accomplished.

Moreover, it appears that on October 3, 1946, Dee Hong Lue was investigated by Major Primitivo San Agustin, Jr., G-2 of the Philippine Army, because of the discovery of some gun parts found in his shipment of surplus material from Palo, Leyte.

In his sworn statement, Exhibit 16 (pp. 133-139, BIR rec.) before said officer, Dee Hong Lue admitted the following: That he paid the PLC the amount of ₱1,250,000.00 "with the checks of Yu Khe Thai, maybe also Alfonso Sycip and my checks with many others"; that "at the beginning I was trying to buy the pile for myself without telling other people and other friends of mine." "Watkins came to me and he bid for me for ₱600,000 or ₱700,000, but later on when the price went up to ₱1,250,000, I talked to my friends who said I could get the money." "So, I bought it with their checks and mine" (Exhibit 16-B, p. 138, BIR rec.) and, that after buying the "Mystery Pile", he (Dee Hong Lue) never inspected the same personally. (p. 141, BIR rec.)

In his affidavit, Exhibit 15 (p. 144, BIR rec.) Dee Hong Lue admitted that of the amount of ₱1,250,000.00 which he paid in two installments sometime in July, 1946, to the PLC, ₱1,181,250.00 (should be ₱1,181,000.00) of the amount came from the following: Yu Khe Thai who advanced to him (₱250,000.00); Sy Seng Tong - ₱375,000.00; Alfonso Z. Sycip - ₱375,000.00; Tan Tiong Bio - ₱125,000.00; Robert Dee Se We - ₱25,000.00; and, Jose S. Lim - ₱31,000.00; that his understanding with these persons was that should they eventually join him in Central Syndicate, such advances would be adjusted to constitute their investments; and, that soon after the "Mystery Pile" was purchased from the PLC, all the above-named persons with the exception of

Robert Dee Se Ke and Jose S. Lim, formed the Central Syndicate <u>and a re-allocation of shares was made corresponding to the amounts advanced by them.</u>

Added to these, we have before us other documentary evidence for the respondent consisting of Exhibits 18, 19, 20, 21, 23, 24, 25, 26, 27, 28 and 29 (pp. 8[illegible], 88, 92-96, 99-103, 117-128, 119-120, 121-128, BIR rec.) all tending to prove the same thing — that the Central Syndicate and/or the group of big financiers composing it and <u>not</u> Dee Hong Lue was the real purchaser (importer) of the "Mystery Pile" from the FLC; that in the contract of sale between Dee Hong Lue and the FLC the former acted principally as <u>agent</u> (Article 1930, New Civil Code) of the petitioners Yu Khe Thai, Sy Seng Iong, Alfonso Z. Sycip and Tan Tiong Bio who advanced the purchased price of ₱1,125,000.00 out of the ₱1,250,000.00 paid to the FLC, Dee Hong Lue being the purchaser in his own right only with respect to the amount of ₱69,000.00; and, that the deed, Exhibit 13 (p. 66, BIR rec.) purporting to show that Dee Hong Lue sold the "Mystery Pile" to the Central Syndicate for a consideration of ₱1,250,000.00 is but a ruse to evade payment of a greater amount of percentage tax.

To our mind, the deed of sale, Exhibit 13 (p. 66, BIR rec.) as well as the circumstances surrounding the incorporation of the Central Syndicate, are shrouded with as much mystery as the so-called "Mystery Pile" subject of the transaction. But, as oil is to water, the truth and underlying motives behind these transactions have to surface in the end. Petitioners would want us to believe that Dee Hong Lue bought in his own right and for himself the surplus goods in question for ₱1,250,000.00 from the FLC and then, by virtue of a valid contract of sale, Exhibit 13 (p. 66, BIR rec.) transferred and conveyed the same to the Central Syndicate at cost. If this be so, what need was there for Dee Hong Lue to agree in the immediate organization and incorporation of the Central Syndicate with six other capitalists when he could very well have disposed of the surplus goods to the public in his individual capacity and keep all the profits to himself without sharing 9/10th of it to the other six incorporators and stockholders of the newly incorporated Syndicate.

It appears that Dee Hong Lue "sold" the pile to the Central Syndicate for exactly the same price barely forty-six (46) days after acquiring it from the FLC and exactly five (5) days after the Syndicate was registered with the Securities and Exchange Commission on August 15, 1946. This is indeed most unusual for a businessman like Dee Hong Lue who, it is to be presumed, was out to make a killing when he acquired the surplus goods from the FLC for the staggering amount of ₱1,250,000.00 in cash.

Again, why did Dee Hong Lue waste all his time and effort not to say his good connections with the FLC by acquiring the goods from that agency only to sell it for the same amount to the Central Syndicate? This would have been understandable if Dee Hong Lue were the biggest and controlling stockholder of the Syndicate. He could perhaps reason out to himself, 'the profits which I am sacrificing now in this sale to the Syndicate, I will get it anyway in the form of dividends from it after it shall have disposed of all the "Mystery File" to the public.' But then, how could this be possible when Dee Hong Lue was the smallest subscriber to the capital stock of the Syndicate? It appears from the Articles of Incorporation that of the authorized capital stock of the corporation in the amount of ₱500,000.00, Dee Hong Lue subscribed to only ₱20,000.00 or 1/25th of the capital stock authorized and of this amount only ₱5,000.00 was paid by him at the time of incorporation. So here is an experienced businessman like Dee Hong Lue who, following the theory of petitioners' counsel, bought the "Mystery File" for himself for ₱1,250,000.00 in cash, and after a few days sold the same at cost to a corporation wherein he owned only 1/25th of the authorized capital stock and wherein he was not even an officer, thus doling out to the other six incorporators and stockholders net profits in the sum conservatively estimated by the respondent to be ₱206,116.45 out of a total of ₱929,073.83 which normally could all go to him. We take judicial notice of the fact that as a result of our immense losses in property throughout the archipelago during the Japanese occupation, either through destruction or systematic commandeering by the enemy and our own forces, surplus properties commanded a very good price in the open market after the liberation and that quite a number of surplus dealers made immense fortunes out of it. We believe the respondent was quite charitable if not more than fair to the Central Syndicate in computing the profits realized by it in the resale of the "Mystery Pile" to the public at only 18.8% of the acquisition price.

Now, from the side of the Central Syndicate. This corporation, as its articles of incorporation, Exhibit A (pp. 60-66, CIA rec.) will show, was incorporated on August 15, 1946 with an authorized capital stock of ₱500,000.00 of which ₱200,000.00 worth was subscribed by seven (7) persons and ₱50,000.00 paid-up in cash at the time of incorporation. Five (5) days after its incorporation, as the Deed of Sale, Exhibit 13 (p. 66, BIR rec.) purports to show, the said corporation bought from Dee Hong Lue the "Mystery Pile" for ₱1,250,000.00 in cash. This is indeed quite phenomenal and fantastic not to say the utmost degree of high finance, considering that the corporation had a subscribed capital stock of only ₱200,000.00 of which only ₱50,000.00 was paid-up at the time of incorporation and with not the least proof showing that it ever borrowed money in its own name from outside source to raise the enormous amount allegedly paid to Dee Hong Lue nor evidence to show that it had by then in so short a time as five (5) days accumulated a substantial reserve to meet Dee Hong Lue's selling price.

Furthermore, at first blush it would seem quite difficult to understand why the seven (7) incorporators and stockholders of the Central Syndicate formed a corporation with a subscribed capital stock of only ₱200,000.00, and with cash on hand of only ₱50,000.00 knowing full well that there was a transaction awaiting the newly registered corporation involving an outlay of ₱1,250,000.00 in cash. We believe this was done after mature deliberation and for some ulterior motive. As we see it, the only logical answer is that the incorporators wanted to limit whatever civil liability that might arise in favor of third persons, as the present tax liability has now arisen, up to the amount of their subscriptions, although the surplus deal they transacted and which we believe was the only purpose in the incorporation of the Central Syndicate, was very much over and above their authorized capital. Moreover, by limiting its capital, the corporation was also able to save on incidental expenses, such as attorney's fee and the filing fee paid to the Securities and Exchange Commission, which were based on the amount of the authorized capital stock.

Another mystery worth unravelling is what happened to the ₱1,181,250.00 (should be ₱1,181,000.00) which Dee Hong Lue in his affidavit, Exhibit 15 (p. 144, BIR rec.) claims to have received from Messrs. Yu Khe Thai, Sy Seng Tong, Alfonso Z. Sycip, Tan Tiong Bio (all incorporators of the Syndicate) and two others as "advances" with which to pay the PLC. There is no evidence on record to show that Dee Hong Lue ever returned this amount to these six (6) persons after he supposedly received ₱1,250,000.00 from the newly incorporated Syndicate by virtue of the Deed of Sale, Exhibit 13. This is the explanation that Dee Hong Lue gave in this regard as appearing in his affidavit, Exhibit 15: "That soon after the above-mentioned property was purchased, the above parties, with the exception of Robert Dee So We and Jose S. Lim decided to join the proposed Central Syndicate and a reallocation of shares was made for the reason that some of the above parties in turn had to get advances from third parties." If this were true, why was it that Messrs. Yu Khe Thai, Sy Seng Tong, Alfonso Z. Sycip and Tan Tiong Bio who advanced ₱250,000.00; ₱375,000.00; ₱375,000.00 and ₱125,000.00 to Dee Hong Lue were made to appear in the Articles of Incorporation of the Central Syndicate as having subscribed to shares worth only ₱40,000.00; ₱30,000.00; ₱30,000.00 and ₱20,000.00 and of having paid only ₱10,000.00; ₱7,500.00; ₱7,500.00; and ₱5,000.00 on their subscriptions, respectively? Would it not be more in keeping with corporate practice, following the explanation of Dee Hong Lue, to just credit those four (4) persons in the corporation with shares worth the amount advanced by them to Dee Hong Lue?

On the basis of the above figures, the re-allocation of shares in favor of the four (4) incorporators who advanced enormous sums for the Syndicate seems at first glance to be totally disproportionate and unfair to them. However, in the final analysis it is not so as we will now show. Immediately after the incorporation of the Syndicate, as the evidence shows, Dee Hong Lue was made to execute a deed of transfer under the guise of a contract of sale, conveying full and complete ownership of the "Mystery Pile" to the newly organized corporation. So we have, on the face of the Articles of Incorporation and Exhibit 13, a corporation with assets worth only ₱50,000.00 cash owning properties worth over a million pesos. Obviously, the incorporators of the Syndicate, particularly those four who advanced enormous sums to Dee Hong Lue, are not ordinary businessmen who could easily be taken for a ride. With the precipitated execution of the "Deed of Sale" by Dee Hong Lue in favor of the Syndicate, transferring and conveying ownership over the entire pile to the latter, the recoupment of their advances from the newly acquired assets of the corporation was sufficiently secured, and at the same time, by making the document appear to be a deed of sale instead of a deed of transfer as it should be under Article 1891 of the New Civil Code, they have reduced (at least attempted to) their sales tax liability with the argument that Dee Hong Lue was the original "purchaser" or "importer" of the goods and therefore the taxable sale was that one made by him to the Syndicate and not the sales made by the latter to the public. After going over the Articles of Incorporation of the Central Syndicate and the other circumstances of this case, we draw the conclusion that it was organized just for this particular transaction; that its life span was expressly limited to two (2) years from and after the date of incorporation just to give it time to dispose of the "Mystery Pile" to the public and then liquidate all its assets among the seven incorporators-stockholders as in fact it was done on August 15, 1948; that from the very start, the seven (7) incorporators had intended it to be a closed corporation without the least intention of ever selling to other persons the remaining authorized capital stock of ₱300,000.00 still unsubscribed; and, that upon its liquidation, the seven (7) incorporators composing it got much more than their investments including those who advanced ₱1,181,000.00 to the FLC for the corporation.

Having thus found that the Central Syndicate and not Dee Hong Lue was the original purchaser and importer of the "Mystery Pile" and therefore the party liable for the payment of the sales tax prescribed under Section 186 of the Tax Code on its gross sales to the public amounting ₱1,447,551.65 the question of prescription has now become an easy matter to decide.

The petitioners contend that under Section 331 of the Tax Code, internal revenue taxes should be assessed within five (5) years after the return was filed and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. It is argued that the letter of the Central Syndicate, through its General Manager, Mr. David Sycip, to the Collector of Internal Revenue, dated October 19, 1946, is in itself a "return" for the purpose of counting the five (5) year prescriptive period provided in the aforesaid section of the Tax Code because it contains the necessary facts and figures upon which a valid assessment could be based and issued. Petitioners conclude that since the assessment was issued by the Collector of Internal Revenue on January 4, 1952, or after a period of more than five (5) years and two (2) months from the date the "return" was filed on October 19, 1946, the Collector acted beyond the prescriptive period and therefore the assessment in question is without any legal force and effect. By way of additional argument, the petitioners also contend that the ten-year prescriptive period provided in Section 332 of the Tax Code is not applicable to the present case because at no time did the respondent Commissioner ever claim nor prove the commission of fraud on the part of the taxpayer.

The respondent contends on the other hand that this is a case of a failure to file a return, and therefore, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the omission, pursuant to Section 332 (a) of the Tax Code. And the respondent concludes that it appearing that the assessment herein was made on January 4, 1952, or within ten (10) years from the discovery on September 18, 1951 of the omission by Central Syndicate to file a return, it is obvious that the assessment against the corporation was made within the period of limitation.

The resolution of the question of prescription in the instant case depends on whether or not the letter, Annex A (pp. 4-5, CTA rec.) dated October 19, 1946, which was sent by Central Syndicate, through its General Manager, Mr. David Sycip, to the Commissioner of Internal Revenue, could be considered as a true, complete and valid return of the Syndicate sufficient to start the running of the period of limitation of five (5) years prescribed in Section 331 of the Tax Code.

Jacob Mertens, in his book entitled "The Law of Federal Income Taxation" (Vol. 10, 1948 edition, section 37.13, pp. 182-183), has this to say on the statute of limitation issue:

> "A return will usually be held to be in substantial compliance with the law which is (1) made in good faith and is not false or fraudulent, (2) covers the entire period involved, and (3) contains information as to various items of income, deductions, credit with such definiteness as to permit computation and assessment of the tax (citing S. Ct.

> 566). Where the return has been filed in good faith, the omission of some items of income is immaterial." (Citing C. T. McDaniel, 44 B.T.A. 564; Lancaster Lens Co., 10 B.T.A. 1153; White v. Hood Rubber Co., 280 U.S. 463-465; 74 L. Ed. 542, 548.) (Emphasis supplied.)

Based on the above criterion, we cannot by any means consider the letter, Annex A (pp. 4-5, CTA rec.) as a valid return of the Central Syndicate sufficient to start the running of the five-year period of limitation prescribed in Section 331 of the Tax Code. In the first place, the alleged return was filed by the Central Syndicate not for and in its behalf, as it should have been since it was the purchaser and importer of the surplus goods, but "in the name and on behalf of Dee Hong Lue". In the second place, even granting that the alleged return was filed for the Central Syndicate in its own behalf, still we cannot consider it as a valid return for the corporation because it is fraudulent, inaccurate, and incomplete. Fraudulent, because the Central Syndicate made it appear therein that Dee Hong Lue was the party liable to the Government for the sales tax based on a fictitious contract of sale, when actually it was an original purchase by the Syndicate itself from the FLC and therefore the corporation is the party primarily liable for the tax in question based on its gross sales to the public. The alleged return was incomplete and inaccurate when it was filed on October 19, 1946, because what should have been reported for sales tax purposes was the gross sales of the Syndicate to the public amounting to ₱1,447,551.65 and not the alleged selling price by Dee Hong Lue to the Syndicate amounting to ₱1,250,000.00.

Accordingly, we are of the opinion and so hold that the disputed deficiency sales tax assessment was issued within the prescribed period of limitation inasmuch as the letter of October 19, 1946, is not a return within the purview of Sections 331 to 333 of the National Internal Revenue Code. And even granting that the letter of October 19, 1946, is a return, the deficiency assessment was still validly issued within the prescriptive period. The said alleged "return" is fraudulent, and therefore, "the tax may be assessed, or a proceeding in court for the collection of such tax may begun without assessment, at any time within ten years after the discovery of the x x x fraud x x x." (Sec. 332 (a), National Internal Revenue Code.) In the instant case, the deficiency tax was assessed within ten years from the discovery of the fraud.

WHEREFORE, in view of the foregoing considerations, the decision of the Collector of Internal Revenue appealed from is hereby affirmed, except with regard to the imposition of the compromise penalty of ₱300.00 the collection of which is unauthorized and illegal in the absence of a compromise agreement between the parties. (Collector of Internal Revenue vs. University of Sto.

Tomas, G. R. No. L-11274, Nov. 28, 1958; Collector of Internal Revenue vs. Bautista & Tan, G. R. No. L-12250, May 27, 1959.)

The petitioners Tan Tiong Bio, Yu Khe Thai, Lim Shui Ty, Alfonso Z. Sycip, Sy En alias Sy Seng Sui, Dee Hong Lue, and Sy Beng Tong, who appear in the Articles of Incorporation of the Central Syndicate Annex A (pp. 60-66, CTA rec.) as incorporators and directors of the corporation, the second named being in addition its President and the seventh its Treasurer, are hereby ordered to pay, jointly and severally, to the Collector of Internal Revenue, the sum of ₱33,797.88 as deficiency sales tax and surcharge on the surplus goods purchased by them from the Foreign Liquidation Commission on July 5, 1946, from which they realized an estimated gross sales of ₱1,447,551.65, with costs. (Phillips v. Commissioner, 283 U.S. 589, 51 S. Ct. 608, 75 L. Ed. 1289; Pierce v. United States, 255 U.S. 398, 41 S. Ct. 365, 65 L. Ed. 697; Fairless v. Commissioner, 67 F (2d) 475 (C.C.A. 6); Crocker et al. v. Commissioner of Internal Revenue, 84 F (2d) p. 64, affirming 32 BTA 861.)

SO ORDERED.

Manila, June 30, 1959.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge ROMAN M. UMALI concurs in a separate opinion.

TAN TIONG BIO, YU KHE THAI,
LIM SHUI TY, ALFONSO Z. SYCIP,
SY EN, CO GIAP, DEE HONG LUE,
SY SENG TONG, DAVID SYCIP,
and/or "CENTRAL SYNDICATE",
Petitioners,

- versus - C.T.A. CASE NO. 9

BUREAU OF INTERNAL REVENUE,
Respondent.

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CONCURRING OPINION

I concur, and in expressing my concurrence, I wish to make the following observations.

The main issue in this case relates to the question of who is the importer of the goods (the "Mystery Pile") located in Base K in Leyte of the U.S. Army bought from the Foreign Liquidation Commission in 1946. Respondent claims that the importer is the Central Syndicate and its sales of said goods are the original sales taxable under Section 186 of the Revenue Code. On the other hand, petitioners claim that the importer is Dee Hong Lue and his sale of said goods to the Central Syndicate is the taxable sale.

The facts of the case clearly show that the importer is the Central Syndicate and not Dee Hong Lue. The said goods were purchased by Dee Hong Lue from the Foreign Liquidation Commission merely as an agent or representative of the Central Syndicate. I quote from the letter of the Central Syndicate addressed to the Commanding General, AFWESPAC, Manila, dated September 17, 1946:

> "The undersigned organization is the owner of the so-called Leyte "Mystery Pile" surplus properties, by virtue of purchase from the Foreign Liquidation Commission (effected under the name of Dee Heng Lue, subsequently one of the organizers of the organization)." (Exh. 39, p. 137, B.I.R. records.)

The deed of sale executed by Dee Heng Lue on August 20, 1946 in favor of the Central Syndicate transferring to the latter all his rights to and interests in the "Mystery Pile" was made obviously to enable the Central Syndicate to deal directly with the Foreign Liquidation Commission. Therefore, as the purchaser of said goods is the Central Syndicate and as it was the one which took delivery of the goods from Base K, it is the importer, and its sales of said goods are the original sales taxable under Section 186 of the National Internal Revenue Code, before its amendment by Republic Acts Nos. 588 and 594.[1]

Assuming that Dee Heng Lue purchased the "Mystery Pile" for himself, and not as agent or representative of the Central Syndicate, still the evidence of record shows that the importer of said goods is the Central Syndicate and not Dee Heng Lue. It is true that it was Dee Heng Lue who entered into the contract with the Foreign Liquidation Commission for the purchase of the "Mystery Pile", but the evidence shows that he sold and assigned all his rights to and interests in said contract to the Central Syndicate,

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[1] After the effectivity of Republic Act No. 594, imported goods become subject to the advance sales

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494

and it was the Central Syndicate which took delivery of the goods from the Foreign Liquidation Commission at Base K in Leyte. This is evidenced by the letter of Dee Hong Lue to the Foreign Liquidation Commission dated September 2, 1946, which reads:

> "The undersigned is the purchaser under the above contract and has the honor to notify you that he has sold all his rights and interests in the same to the corporation known as 'CENTRAL SYNDICATE', with offices at No. 312, Trade and Commerce Building, Manila." (Page 65, B.I.R. records.)

and by the letter of the Central Syndicate to the Foreign Liquidation Commission bearing the same date, pertinent portions of which read:

> "The undersigned corporation is the successor in interest to Mr. Dee Hong Lue, who is the buyer named in the above-mentioned contract.
>
> "Said contract refers to the purchase of surplus properties at Base K, Leyte Island, commonly known as the 'Mystery Pile'.
>
> "Under the terms of the said contract (Article 8), adjustments will be made for variations in weight. <u>When our representative took over the properties at Base K, Leyte</u>, the United States Army Officers-in-Charge stated that they were not in a position to supervise any check-up on the weight of the properties with the end of determining what shortages or excesses there are in weight, but, on the other hand, they refused to let us take possession of the properties without accomplishing the so-called shipping documents." (Page 64, BIR records; underscoring supplied.)

As further evidence of the fact that it was the Central Syndicate which took possession of the goods and removed the same from Base K, we quote from the letter of said Syndicate to the Foreign Liquidation Commission dated February 21, 1947:

> "On September 2, 1946 we wrote you (copy of letter enclosed) informing you that we expected a very serious shortage in delivery from the 'Mystery Pile', subject of the above contract.
>
> "At that time we had been operating in Leyte for about a month, and our Leyte Manager had reported that in every sub-pile checked, the volume of the cargo contained in it came up to only 40% to 50% of the volume represented by the U. S. Army as being present in the corresponding sub-pile.
>
> x x x
>
> "At the present time we have completed shipping from Leyte all non-military items. There is approximately 20,000 cu. ft. (external measure) of cargo there consisting of parts and accessories for tanks and weapons. The U.S. Army authorities claim that these are NOT 'combat type' items, but the Philippine authorities do consider them as such. This matter had not been finally settled yet. (Exh. 12, p. 59, B.I.R. records; underscoring supplied.)

It is now well settled that a person who bought surplus goods from the Foreign Liquidation Commission and who removed the goods bought from the U. S. military bases in the Philippines is considered an importer of such goods and is subject to the sales tax or compensating tax, as the case may be. (Go Cheng Tee v. Meer, 47 O.G. 269; Saura Import and Export v. Meer, G. R. No. L-2927, Jan. 26, 1951; P.M.P. Navigation v. Meer, G.R. No. L-4621, March 24, 1953; A. Soriano y Cia. v. Coll. of Int. Rev., 51 O.G. 4548.) In this case, it appearing that the Central Syndicate was the owner of the "Mystery Pile" before its removal from

Base K and that it was the one which actually took delivery thereof and removed the same from the U. S. military base, it is the importer within the meaning of Section 186 of the Revenue Code, as it stood before the enactment of Republic Act No. 594, and its sales of the surplus goods are the original sales taxable under said section and not the sale to it by Dee Hong Lue.

This case is the same as that of a person who orders goods from abroad who indorses to another person, before removal of the goods from the customhouse, the bill of lading and other shipping documents. The importer is not the person who originally ordered the goods from abroad. The importer is the indorsee of the bill of lading and other shipping documents who is the owner of the goods at the time of removal, and who actually removes the goods, from the customhouse. In other words, for tax purposes, ownership of or title to the goods imported at the time of the last act of importation, i.e., removal of the goods from customs, determines who is the importer. The same rule applies with equal force to purchases of goods from U. S. Army bases in the Philippines because they are considered, for tax purposes, as importations from abroad. To consider an importer one who has assigned to another his rights as importer and the assignment as the original sale taxable under the law, and thereby render the sales of the assignee exempt from the sales tax, is to provide a fertile ground for tax evasion.

It having been established that the importer in this case is the Central Syndicate and that its sales of the surplus goods in question are the taxable sales under Section 186 of the Revenue Code, the next question is whether or not the assessment against the Central Syndicate was made within the period prescribed in Sections 331 and 332 of the same Code. The Central Syndicate did not file quarterly returns of its sales of said surplus goods under Section 183(A). The alleged return which it filed on October 19, 1946, if it can be considered a return, was a return by Dee Hong Lue of the alleged sale to the Central Syndicate of said surplus goods. The Syndicate could not have filed on Oct. 19, 1946 returns of its future sales from 1947 to 1949. The records show that it took the Central Syndicate from 1946 to 1949 to dispose of the surplus goods it acquired from the Foreign Liquidation Commission. (See Exh. 3, p. 3, B.I.R. records.) There is nothing in the law which authorizes a taxpayer to file returns of intended sales, or sales which have not yet materialized.

No sales tax return having been filed by the Central Syndicate of its sales of said surplus goods under Section 183(A), the law applicable is Section 332(a) which provides that in case of a failure to file a return, the tax may be assessed at any time within ten years from the date of discovery of the omission. There is no question in this case that

502

the assessment was made within ten years from the date of discovery of the omission of the Central Syndicate to file its sales tax returns.

ROMAN M. UMALI
Associate Judge