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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA MUTUAL STEAM
NAVIGATION CO., LTD.
represented by A. SORIANO
CORPORATION,
Petitioner,

versus

C.T.A. CASE NO 2728

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

3/30/79

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D E C I S I O N

This involves an appeal interposed by petitioner China Mutual Steam Navigation Co., Ltd. from the decision of respondent Commissioner of Internal Revenue, dated July 18, 1975, assessing against and demanding from the former the sum of ₱23,061.40, allegedly representing deficiency common carrier's fixed and percentage taxes, inclusive of increments, for 1963.

Petitioner China Mutual Steam Navigation Co., Ltd. (China Mutual for short) is a foreign shipping company of British registry engaged in the shipping business in the Philippines through its local ship agent. In 1963, petitioner was represented in the Philippines by Smith Bell & Co. (Phils.) Inc. (Smith Bell for short). In an agency agreement executed sometime in 1970, among Smith Bell, Blue Funnel Line, China Mutual, Ocean Steam Ship

Co., Ltd., and Soriamont Steamship Agencies (a division of A. Soriano Corporation), the latter replaced Smith Bell as the local ship agent of the petitioner in the Philippines beginning January 1970 and has taken over the protest of tax assessments against petitioner, among others (Exh. "N").

In a letter dated November 20, 1973 respondent assessed against and demanded from petitioner the total sum of ₱23,061.40, representing fixed and percentage taxes, including increments, for 1963, allegedly for its failure to file the returns and pay the fixed and percentage taxes on its gross receipts, computed as follows:

Fixed tax for 1963		₱ 20.00
Gross receipts in 1963 .	₱812,840.00	
2% tax therein . .	₱ 16,256.80	
25% surcharge for late payment	4,064.20	₱20,321.00
		₱20,341.00
14% interest from 1-1-73 to 12-15-73		2,720.40
TOTAL AMOUNT DUE AND PAYABLE		₱23,061.40

(Exhs. "O" & "6", p. 24, BIR rec.)

On December 19, 1973 and January 3, 1974, petitioner through counsel, protested the above assessment on the ground that the right of the government to assess has already prescribed and requested cancellation and withdrawal thereof. (Exh. "P", pp. 26-27, BIR rec.; Exh. "Q".)

On August 8, 1975 petitioner received from respondent a letter dated July 18, 1975, denying its protest. (Exhs. "R" &"R-1"; Exh. 8, pp. 30-31, BIR rec.) On September 2, 1975, petitioner instituted the instant appeal.

The pleadings of the parties raised the following issues for our resolution, to wit:

1. Whether or not petitioner has filed the returns and paid the fixed and percentage taxes on its gross receipts as common carrier for 1963, and

2. Whether or not the right of the government to assess the deficiency fixed and percentages taxes has already prescribed.

At the outset, we would like to stress the time-honored principle that tax assessments are presumed to be correct unless the contrary is shown and the burden of proof rests upon the taxpayer to overcome this presumption. The determination, however, of a deficiency by the government is only <u>prima facie</u> correct. (Tan Guan v. Court of Tax Appeals, 19 SCRA 903; Republic of the Phil. v. Phil. Rabbit Bus Line, Inc., 32 SCRA 211; Gutierrez v. Coll. of Int. Rev., 14 SCRA 33.) Based on this legal presumption, we will now proceed to examine the evidence of the parties and ascertain whether or not petitioner has overcome the presumptive correctness of the assessment in question.

Petitioner stoutly maintains that it has filed the required returns and paid the fixed and percentage taxes on its gross receipts as common carrier for 1963. In support of these contentions, petitioner alleges: (a) that petitioner and Ocean Steam Ship Co., Ltd. (Ocean Steam Ship for short) are the only two constituent companies operating under the trade name Blue Funnel Line; (b) that Blue Funnel Line was not a separate trading entity in the Philippines but merely a trade name of petitioner and Ocean Steam Ship; (c) that Blue Funnel Line has no vessel of its own operating in the Philippines but operated only the vessels owned either by petitioner or Ocean Steam Ship; and (d) that the monthly gross receipts declared by Blue Funnel Line in 1963 and on which the percentage taxes were paid included the receipts of petitioner. Petitioner likewise asserts that pursuant to Section 331 of the Tax Code (Sec. 318, 1977 Tax Code), the right of the government to assess the deficiency fixed and percentage taxes has already prescribed considering that it was issued after the lapse of 5 years from the date the return was filed.

On the other hand, respondent counters that petitioner failed to present evidence proving that it filed the required returns and paid fixed and percentage taxes for 1963. He argues that petitioner is a separate or distinct corporation from Blue Funnel Line and the receipts of the latter are different from the receipts of the former. He then concludes that the tax could be assessed within ten years from the discovery of the omission to file the return and since it was only on July 25, 1967 that the omission was discovered, the assessment issued on November 20, 1973 was well within the prescriptive period prescribed in Section 332(a) of the Tax Code. (Sec. 319, 1977 Tax Code.) There seems to be no quarrel that Blue Funnel Line filed the monthly percentage tax returns and paid the fixed and percentage taxes on the monthly gross receipts of various vessels in 1963. (Exhs. "F", "F-1" to "F-11".) In fact, respondent, in effect, admitted this in his memorandum, the pertinent portions of which are quoted hereunder for facility:

> " . . . On the other hand, Exhibits 'F', 'F-1' to 'F-11' - Statement of Gross Freight on Cargo Loaded at Philippine Ports on Steamers of Blue Funnel Line for the month of January to December 1963, clearly show that Blue Funnel Line Ltd. had steamers loading cargoes in the Philippines, thereby supporting our contention that the return filed in the name of said corporation and the payment of the percentage tax due thereon were for the account of the aforenamed corporation and did not include the percentage tax due from herein petitioner." (Memorandum for Respondent, p. 101, CTA rec.; underscoring supplied.)

At any rate, we are more than convinced from the following facts which show clearly that Blue Funnel Line actually filed the returns and paid fixed and percentage taxes on the gross receipts of various vessels in 1963. In two letters dated July 7, 1965 and September 29, 1966, respondent assessed Blue Funnel Line the sums of ₱10,767.26 and ₱13,567.84, respectively, representing deficiency percentage taxes, inclusive of 25% surcharge, for the 1st and 2nd semesters of 1963, or a total of ₱24,335.10, for its alleged failure to pay the correct percentage taxes based on the free market rate of exchange then prevailing. (Exhs. "J-1", "K-1" & "K-2-A".) The said assessments were duly protested by Blue Funnel Line but the consideration thereof was held in abeyance until after the Supreme Court shall have decided the case of Commissioner of Internal Revenue v. Royal Interocean Lines (GR No. L-26806) which involved identical issues. When the Supreme Court finally decided the Royal Interocean case on July 30, 1970 (34 SCRA 9), respondent assessed Blue Funnel Line on January 28, 1971 the total sum of ₱147,691.02 as deficiency common carrier's taxes and penalties for the period from 1960 to June 1966, which included the assessment of ₱24,335.10 for 1963. (Exh. "L".) In compliance with the said decision of the Supreme Court, Blue Funnel Line paid on February 17, 1971 the total amount of ₱140,191.02, exclusive of compromise penalty, which payment included the deficiency assessment of ₱24,335.10 for 1963. (Exhs. "M", "M-1" & "M-2".) These facts clearly show that Blue Funnel Line had paid the common carrier's tax for

1963 but was later on assessed for deficiency common carrier's tax for the same year due to its failure to pay the correct percentage taxes based on the free market rate then prevailing which it readily paid when the Supreme Court finally decided the Royal Inter-ocean case.

The controversy, therefore, between the parties hinges on the pivotal issue of whether or not the returns filed and payments of fixed and percentage taxes on the gross receipts declared by Blue Funnel Line in 1963 included those of herein petitioner.

Petitioner presented Exhibit "C", a statement under oath by John Greenwood, Director (Secretary in 1963) of China Mutual Steam Navigation Co., Ltd. and Ocean Steam Ship Co., Ltd., duly authenticated by the Philippine Consul in Liverpool, England, attesting to the following facts: (a) that petitioner and Ocean Steam Ship were constituent companies operating as the Blue Funnel Line; (b) that the business in the Philippines of petitioner and Ocean Steam Ship was operated under the name Blue Funnel Line; (c) that Blue Funnel Line did not operate as a separate trading entity in 1963 and has not so operated before or since that date; and (d) that per attached certified copy of the Balance Sheet and Auditors' Report of the Blue Funnel Line for the year ended December 31, 1963, it did not trade in that year neither has it received any income nor incurred any expenditure to necessitate the filing of a Profit and Loss Account. Witnesses for the petitioner having direct and personal knowledge of petitioner's shipping operations and activities during the year in question categorically and unequivocably collaborated the above set-up, nature and extent of petitioner's operations when they declared as follows:

1. Mr. Delfin Jimenez - Accountant of the Shipping Department of Smith Bell & Co., local ship agent of petitioner in 1963, testified that vessels of petitioner and Ocean Steam Ship were operated under the name of Blue Funnel Line; that Blue Funnel Line has no vessel operating in the Philippines; that Blue Funnel Line operated two services, i.e., European services under the agency of Smith Bell and U. S. services under De la Rama Steamship Agencies (De la Rama for short) as its local agent; and that Blue Funnel Line through Smith Bell filed the returns and paid the fixed and percentage taxes on the freight gross receipt on cargoes loaded in the Philippines ports on the vessels owned by petitioner and Ocean Steam Ship operating under the trade name Blue Funnel Line.

2. Mr. Remegio Colina - Certified Public Accountant and Chief Accountant of De la Rama in 1963, testified that petitioner and Ocean Steam Ship were two constituent companies of Blue Funnel Line operating under the name of Blue Funnel Line; and that Smith Bell handled the European service of Blue Funnel

Line, while De la Rama represented the U. S. service.

3. Mrs. Josefa Constantino - Certified Public Accountant, Chief Accountant of Soriamont Steamship Agencies since 1974, and Assistant Accountant, Shipping Department of Smith Bell in 1963, declared that Blue Funnel Line has two constituent companies: petitioner and Ocean Steam Ship; that vessels operated by Blue Funnel Line under its trade name were owned either by petitioner or Ocean Steam Ship; that Smith Bell represented the European service of Blue Funnel Line while De la Rama handled the U. S. service; and that the gross receipts on which Smith Bell paid the 2% common carrier's tax referred to vessels owned by either petitioner or Ocean Steam Ship.

Exhibit "A" illustrated in graphic form the organizational set-up, nature and extent of operations in the Philippines of petitioner in relation to Blue Funnel Line and Ocean Steam Ship which was personally prepared and identified by Delfin Jimenez. As testified to by Mr. Jimenez and collaborated by both Remegio Colina and Josefa Constantino, petitioner and Ocean Steam Ship were the only two constituent companies of Blue Funnel Line; Blue Funnel Line was not a separate trading entity in 1963, before or after said year; Blue Funnel Line had no vessel of its own but operated only the vessels of its constituent companies; and Blue Funnel Line operated two services, i.e., the European service under the agency of Smith

Bell and the U. S. service represented by De la Rama.

Exhibits "F", "F-1" to "F-11" are Statement of Gross Freight on Cargo Loaded at Philippine Ports on Steamers of Blue Funnel Line for the Month of January to December 1963. These monthly statements contained the name of the vessels, gross receipts of each, computation of 2% common carrier's tax and annotation at the bottom of the first page the number of the official receipt evidencing payment of the percentage taxes to the BIR. Delfin Jimenez testified that he was the one who prepared these statements in lieu of the standard BIR form for percentage tax return which was not then available and which accompanied the payments for percentage taxes. He also explained and was collaborated by Josefina Constantino, that the caption Cargo Loaded at Philippine Ports on Steamers of Blue Funnel Line operating in Exhibits "F", "F-1" to "F-11", actually and in reality means the cargo loaded on vessels of either petitioner or Ocean Steam Ship since Blue Funnel Line had no vessel of its own operating in the Philippines.

Josefina Constantino who was the Assistant Accountant of Delfin Jimenez in the Shipping Department of Smith Bell in 1963 also testified that she participated in the preparation and filing of returns and payment of fixed and percentage taxes on the gross receipts of Blue Funnel Line in 1963. On cross examination, she declared that petitioner paid the percentage taxes "on the basis" of payment made by Blue Funnel Line and explained it by saying that "Since the vessel operated by Blue Funnel Line is owned either by China Mutual or Ocean Steam Ship, payment made by Blue Funnel Line is payment for China Mutual or Ocean Steam Ship."

To further bolster its stand, petitioner presented Exhibits "II", "JJ", "KK", "LL" and "MM" which are Manifest of vessel, Cargo Receipt of vessel, Fleet Particulars and Annual Report and Account, respectively. Although these exhibits referred to years other than the year in question, it was satisfactorily shown during the trial that the records and other documents on petitioner's operations filed with its agent Smith Bell and those forwarded to its principal abroad have already been destroyed and/or lost being more than 13 years old then. Exhibit II is the Manifest of the vessel Antilochus which was the same form of manifest used in 1963, captioned "Ocean Steamship Company Limited and China Mutual Steam Navigation Company Lited"; Exhibit "JJ" is the Cargo Receipt of vessel Antilochus under the banner of Blue Funnel Line and immediately beneath were the names Ocean Steam Ship Co. Ltd. and China Mutual Steam Navigation Co., Ltd.; Exhibits "KK" and "LL" are Fleet Particulars of petitioner and Ocean Steam Ship showing the name of vessels owned by either petitioner or Ocean Steam Ship; and Exhibit "MM" is the Annual Report and Accounts of Ocean Steam Ship and its subsidiary companies showing on page 22 thereof marked Exhibit "MM-1" the heading <u>Fleet as at 1st May 1970</u>, and the sub-heading <u>Blue Funnel Line</u> (<u>ships owned by</u>: <u>The Ocean Steam Ship Co. Ltd</u>. - <u>The China Mutual Steam Navigation Co., Ltd</u>. . .) and then followed by name of vessels.

Respondent's evidence are exclusively found in the records of the Bureau of Internal Revenue forwarded to us and the testimomy of his lone witness, Revenue Examiner Armando Garces. Mr. Garces testified, among others, that on July 25, 1967 he was given authority to investigate the income and business tax liabilities of petitioner; that after conducting the investigation, he recommended deficiency income tax and percentage taxes against petitioner for 1963 in the respective sums of ₱759,736.10 and ₱20,-351.00; and that his recommendation for deficiency income tax assessment was not given due course by respondent on the ground that the right of the government to assess has already prescribed.

Based on the face of Exhibits "F", "F-1" to "F-11", there seems to be justification for respondent's conclusion that the returns filed and payment of fixed and percentage taxes made by Blue Funnel Line were for its own account and did not include those of petitioner. Carefully analyzing, however, the facts and circumstances of this case as substantially shown and proven by the evidence presented by petitioner, we find that the returns filed and percentage taxes paid on the monthly gross receipts of various vessels declared by Blue Funnel Line in 1963 included petitioner's gross receipts.

We find no cogent reason why this Court should not give full credence to the certification made by John Greenwood, Director of petitioner and Ocean Steam Ship, duly authenticated by the Philippine Consulate in Liverpool, England, that petitioner and Ocean Steam Ship were the only two constituent companies operating under the trade name Blue Funnel Line; that Blue Funnel Line has no vessel of its own operating in the Philippines, hence, operated only the vessels owned either by petitioner or Ocean Steam Ship; and that Blue Funnel Line did not receive any income or incur any expenditure to require making of a Profit and Loss Account. No evidence was produced by respondent to refute this sworn statement; in fact, it was offered and admitted in evidence without objection on the part of respondent.

Scrutinizing and comparing the evidence presented by petitioner, it would appear that the vessels of Blue Funnel Line which came to the Philippines in 1963 found in Exhibits "F", "F-1" to "F-11" were the very same vessels owned either by petitioner or

Ocean Steam Ship as operating in Exhibits "KK", "LL" and "MM". This only lends support to the fact that the vessels referred to in Exhibits FF, "F-1" to "F-11" were actually and in reality vessels owned either by petitioner or Ocean Steam Ship and consequently the gross receipts of these vessels on which the required returns have been filed and the fixed and percentage taxes paid included the gross receipts of petitioner.

We cannot see our way clear as to why Blue Funnel Line would file monthly returns and pay the percentage taxes for its own account when it has no vessel of its own operating in the Philippines and has therefore no receipts to declare. The more logical and sound conclusion, as shown by the evidence, is that it filed the returns and paid the fixed and percentage taxes on the gross receipts of vessels owned by its only two constituent companies - petitioner and Ocean Steam Ship.

Consequently, since in 1963 Blue Funnel Line has been proven to own no vessel of its own operating in the Philippines; was only a trade name for its two constituent companies, petitioner and Ocean Steam Ship; and earned no income or incurred expenses, the conclusion becomes inescapable that the returns filed and fixed and percentage taxes paid based on the gross receipts it declared could refer to no other receipts but those of petitioner and Ocean Steam Ship.

It is a recognized principle in taxation that tax law concerned itself with actual facts or what actually has transpired between the parties regardless of how they may have named or designated the transaction. In other words, form must give way to substance and true facts. (See Comm. of Int. Rev. v. Constantino, 31 SCRA 779; Balbas v. Domingo, 21 SCRA 444; Shell Co. of the Phil. Ltd. v. Fireman's Ins. Co. of Newark, 100 Phil. 757.) This is what actually happened to herein petitioner when instead of filing the returns and paying the percentage taxes for its own account, filed and paid the same in the name or for the account of Blue Funnel Line.

In view of our finding that petitioner through Blue Funnel had paid the fixed and percentage taxes in question, it becomes unnecessary for us to dwell on the issue of whether or not the right of the government to assess the deficiency taxes in question has already prescribed.

WHEREFORE, the decision appealed from should be as it is hereby reversed. No costs.

SO ORDERED.

Quezon City, March 30, 1979.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Acting Presiding Judge