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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANCOM GROUP INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 2977

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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12/15/82

D E C I S I O N

In the case at bar the point urged upon our consideration is whether or not petitioner's lending transactions are acts constitutive of a "lending investor" which includes all persons who make the practice of lending money for themselves or others at interest (Section 187(u), Tax Code of 1977). Thus, aside from the annual fixed tax that it must pay (Section 192(3)(dd), ibid.) is also obliged to pay a percentage tax equivalent to three per centum on gross income (Section 209, ibid.)

Petitioner corporation duly organized and engaged in various business activities, among others, provides general as well as special management services in such areas, viz.: cash, credit, tax, fixed asset and reserve, primarily to its own subsidiaries or group of companies; declared for tax purposes covering the period from the first quarter of 1976 to the first quarter of 1978, inclusive, the total amount of ₱8,103,158.00 as gross interest income derived from its relending operations; and, paid the three (3%) per centum percentage tax amounting to ₱243,059.49 pursuant to Section 209 of the Tax Code, as amended by P.D. 1158-A; likewise the amount of ₱500.00 for each year of the period covered or a total of ₱1,500.00 as fixed taxes under Section 192(3)(dd), same Code.

In a letter dated July 5, 1978 to the respondent Commissioner of Internal Revenue, petitioner sought the refund or credit of the said amounts or a total of ₱244,559.49 as erroneously paid or illegally collected percentage and privilege taxes. Pending any administrative resolution but in order to suspend the running of the two-year prescriptive period for such claims petitioner filed this action on October 11, 1978.

Petitioner presents the propositions as reasons of the appeal that to be categorized as a "lending investor" under the Revenue Code, the lending of money must be at interest, i.e., profit or gain, and the attendant habituality in the lending activity. Petitioner however alleges that far from realizing profit or gain it incurred losses as a consequence of the minimal rates of interest charged. Moreover, the beneficiaries of the relent funds were confined to its own subsidiaries and group of companies to the exclusion of the general public, as such, cannot be deemed in the business much less habitual in the practice of lending money as legally contemplated. Taking cue from the Asturias Sugar Central case, petitioner invokes the ruling:

> "Note that one of the requisites before a person can be classified and taxed as a lending investor is that the lending of 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.
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> "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 petitioner itself paid to the bank for the funds so advanced. In effect, the petitioner's credit is with the bank, and it was the latter that actually collected the interest from the planters than the petitioner." (CTA Case No. 983, February 14, 1963).

Respondent Commissioner of Internal Revenue demurs and maintains that petitioner's "incurred losses from its relending activities does not take it out of the purview of Section 209 of the Tax Code, which imposes an excise tax, a tax laid upon the privilege of engaging in the business of lending money. Payment of the tax is invariably made a condition to the exercise of a privilege in the case of petitioner, the privilege to engage in business as a lending investor. Thus, its payment is not made to relate to profits; rather, it is made to depend on actual receipts without deductions of expenses ((18-A Words and Phrases 617)." And further, petitioner's borrowing of funds from banks and relending the same at minimal rates of interest just sufficient to cover the cost of borrowing, infers habituality, which, "in the practice of commerce presupposes the repetition and continuation of commercial acts, in such manner that they are to each other by reason of the commercial purpose or end which they tend to have." (Siao Tiao Hong v. Commissioner of Internal Revenue, CTA Case No. 1755, March 13, 1970).

We find nothing ambiguous nor obscure in the language of Section 187(u) taken in relation to

Section 209, both of the Tax Code, insofar as the same is brought to bear upon the circumstances of petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that a "lending investor" is one, who in his behalf, or on behalf of another lends money at interest (Sec. 187(u), upon which tacked an imposition of a "a tax equivalent to three per centum on its gross income" (Sec. 209). Understood to mean what it plainly expressed, it a compelling indication that gain or loss is not necessarily decisive but the drawing of interest and requiring it to be paid for the use or forbearance of money that suffice. The tax imposition is essentially addressed and directly brought to bear upon the gross income. As to whether the cost of borrowing would have ratchetted upward and the corresponding interest on relending the same kept distressingly strained to the minimum thereby incurring loss, is a business decision competently left to rest upon petitioner's own vigilance and indulgence. All that we need to state is that loss in no wise lessens nor muffles petitioner's tax obligation. Neither a general economic adversity, however disastrous in consequence, be a warrant for judicial abrogation or a leverage to dilute enforcement of the tax statute, so explicit in terms and so searching in extent. This Court will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. The apparent quibble on the much ado-ed gain or profit can hardly be a reassuring prospect that can easily be reconciled with the statutory intendment. But be that as it may, it is by no means self-evident that the petitioner corporation expects actual and potential benefits and advantages over the years from its subsidiaries which it holds investment and control. Thus,

> "It is often necessary to distinguish between a loss deduction for a payment made, and the capitalization of such payment where there is a resulting benefit which is to continue for several years. The loss provision will not apply, for example, to expenditures made to increase and maintain the earning power of the taxpayer, it being expected that the taxpayer would enjoy the fruits of such expenditures over a period of years." (First National Bank of St. Louis, 3 BTA 807, cited in Mertens Law of Federal Income Taxation Vol. V, 6628.39)

Connected with the question just discussed, petitioner urges that it could not have "loaned money for profit or gain equivalent to the interest provided by law nor had done this habitually in the years in question." Thus, with the exception of its own subsidiaries or group of companies petitioner holds itself out that it had not gone public in its relending activities as would portray habituality since "before a person may be considered a lending investor under the Tax Code, it is necessary that he dedicates himself habitually to the office or profession of lending at interest." (BIR ruling dated December 4, 1975).

We do not in the case at bar reach the same conclusion. As plainly manifested, petitioner corporation, consistent with the corporate purpose, borrows and raises money, negotiates or otherwise obtains funds or any kind of financial assistance for its clients. In the particular sphere of activity, even as a conduit or intermediary, petitioner did borrow funds from banks and relent the same to its clientele of a group of companies of some thirty-seven (Exhs. "J-1" and "N-1") including thirteen subsidiaries (Exh. "Z") and in the process grossed an interest income of ₱8,103,158.00 for the three-year period in question upon which based the payment of ₱243,059.49 representing the percentage tax prescribed in Section 209, supra. This could well characterize and be determinative of the nature, extent and scale of the business conducted by petitioner as regards the lending activity.

Nevertheless, petitioner would have the sprouting impression that by confining the lending to the domain of subsidiaries or group of companies, the scheme is without or beyond pale of the "practice of lending money for themselves or others at interest." (Sec. 187(u), supra). Not so. Ludicrous and expedient piffle indeed if the kind of undertaking cannot validly be infused cognizance within the legal contemplation which reads by itself unless petitioner is unwilling to take the responsibilities or simply unable to discern what they are.

We think the law is broad enough to cover the undertaking with subsidiaries. These corporations in petitioner's holding company system are still separate concerns, the assets, incomes and obligations are legally independent differing not much from the mold of other corporate entities. Petitioner's relending activities with its own subsidiaries have lost none of the animating essence characterizing the "practice of lending money at interest." No more should it matter therefore whether the beneficiaries of the loans and/or advances are its own private preserve of subsidiaries or other entities. The law does not distinguish nor qualify.

We see no reason in the present situation to graft further distinction into it. It may be necessary to repeat what so plainly apply to the case at bar, that,

> "From the above transactions, it is apparent that petitioner be continuously and habitually engaged in the business of lending money with interest to several entities and persons. These lending transactions were not isolated but they represent a series of loans showing habituality. 'Habituality' in the practice of commerce presupposes the repetition and continuation of commercial acts, in such manner that they are to each other by reason of the commercial purpose or end which they tend to have." (Siao Tiao Hong v. Commissioner of Internal Revenue, CTA Case No. 1755, March 13, 1970)

The cited ruling in the Asturias case, supra, relied upon by petitioner, is neither a controlling nor an illuminating precedent. As advancing funds or supplying rice to one's employees in compliance with a collective bargaining agreement does not make the employer a lending investor, there being no interest collected (Nolledo's Commentaries and Jurisprudence on the Tax Code p. 1050), nor does it constitute the "practice of lending money". Such might as well be a maudlin rendition of a denouement which neither imparts plausibility nor serves much of a justification for petitioner's cause.

WHEREFORE, finding the petition to be without merit, the same is dismissed and the refund/credit of the amounts sought is hereby denied, with costs.

SO ORDERED.

Quezon City, Metro Manila, December 15, 1982.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge