LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEGASPI OIL COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4942

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: APR 16 1997

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DECISION

In the case at bar the point which is presented for our consideration is whether or not petitioner be considered a "lending investor" which includes *all persons who make the practice of lending money for themselves or others at interest* (Section 157[u], NIRC of 1987). Thus, aside from the annual fixed tax that it must pay (Sec. 161[3][dd], *ibid.*) it is also obliged to pay a percentage tax equivalent to five *per centum* on gross income (Sec. 175, *ibid.*).

Petitioner is a domestic corporation and is licensed to engage in the manufacture of coconut oil and copra pellets. On June 30, 1990, respondent issued an assessment notice and demand letter covering the following deficiency tax assessments against petitioner for the year 1987:

Deficiency Lending Investors Tax	P5,649,462.95
Deficiency Fixed Tax	4,307.75
TOTAL	P5,653,770.70

Thru a letter, dated June 26, 1990, received by the respondent on July 31, 1990, petitioner formally protested aforesaid tax assessments. On December 14, 1992, petitioner received the decision of respondent, dated September 9, 1992, denying petitioner's protest with finality. Hence, the instant petition.

As earlier adverted to at the onset, the issue to be resolve by the Court is whether or not petitioner falls within the definition of a "lending investor" under Section 157(u) of the Tax Code, thus subject to percentage tax under Sec. 175, *ibid.* and fixed tax under Section 161(3)(dd), *ibid.*, which provides:

> **SECTION 157.** x x x
>
> (u) "Lending investors" includes all persons who make a practice of lending money for themselves or others at interest.
>
> **SECTION 175.** ***Percentage tax on dealers in securities; lending investors.*** - Dealers in securities and lending investors shall pay a tax equivalent to six (6%) per centum of their gross income. Lending investors shall pay a tax equivalent to five (5%) percent of their gross income. (As amended by PD No. 1994)
>
> **SECTION 161.** ***Fixed taxes.*** - x x x
>
> (3) *Other fixed taxes.* - The following fixed taxes shall be collected as follows, the amount stated being for the whole year, when not otherwise specified: x x x
>
> (dd) Lending investors -

> 1. In chartered cities and first class municipalities, one thousand pesos;
>
> 2. In second and third class municipalities, five hundred pesos.
>
> 3. In fourth and fifth class municipalities and municipal districts, two hundred fifty pesos: *Provided*, That lending investors who do business as such in more than one province shall pay a tax of one thousand pesos.

Petitioner presents the propositions as reasons of the petition for review that to be categorized as a "lending investor" under the Tax Code, the lending of money must be at interest and must be habitual. Petitioner pointed out that it is engaged in the oil milling business and not in the business of lending money, that the credit it extended to the holding companies was effected through a single set of its Board of Directors for a single purpose - to be used in purchasing the SMC shares for the benefit of the coconut farmers who are the stockholders of the petitioner company and its affiliates and that the lending money was merely a one-time and isolated case, hence, the requirement of habituality is absent, thereby brings the petitioner out of the ambit of Section 157(u) of the Tax Code. Moreover, petitioner stressed that this one time/isolated case of lending of money to its affiliates was not purposely done to earn profit or gain but was geared towards the acquisition of SMC shares and that the interest income from said advances which accrued to the petitioner in its books was just sufficient to cover the interest expense it has itself paid to the bank and other affiliates for the funds so advanced. In effect, petitioner merely acted as a conduit between the holding companies and the banks to avail of petitioner's credit line, thus, petitioner should not be classified as a "lending investor". Taking the cue from the case of **Asturias Sugar Central, Inc. v. Commissioner of Internal Revenue, CTA Case No. 983**, 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.
>
> x x x. 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."

Respondent on the other hand demurs and maintains that petitioner falls within the classification of a lending investor. Respondent stressed that the <u>one-</u>

time/single act of the petitioner in lending of money to several holding companies for the acquisition of SMC shares is not the determining factor of whether or not it is a lending investor, but the extension of said advances to different holding companies.

We find nothing ambiguous nor obscure in the language of Section 157(u) taken in relation to Section 175, both of the Tax Code, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that a "lending investor: is one, who practice lending money at interest. Understood to mean what it plainly expresses, the business of a lending investor requires not only lending of money at interest but also habituality of the act of lending money. Thus:

> "x x x. '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 commercial purpose or end which they tend to have. **(Siao Tiao Hong v. Commissioner of Internal Revenue, CTA Case No. 1755)**

Connected with the definition of practice just discussed, the lending of money of the petitioner on a one-time/isolated case with its holding companies would not bring her under the purview of a lending investor.

As stated and proven by the petitioner, no subsequent advances were extended by the petitioner to said holding companies or to other companies. Thus, the supposed repetition was absent in the instant case. Hence, the questioned lending transaction of petitioner could not be considered habitual since it was not done so often as to form a habit.

The respondent itself, in its ruling, dated December 4, 1975, has said: "x x x the business of a lending investor requires not only lending money at interest but also habituality of the act of lending money. Thus, before a person may be considered a lending investor liable to tax, it is necessary that he dedicate himself habitually to the office or profession of lending money at interest and isolated cases do not mean the conduct of his business. (Underscoring supplied)

In the case of **Molo v. Yatco, 71 Phil. 465**, it was held that a person who lent money to several persons with interest, without proving that said loans were made accidentally or due to certain peculiar circumstances, was presumed to be a lending investor within the meaning of the law. In the case at bar, however, petitioner has clearly established that the advances to its affiliates were made due to certain peculiar circumstances - the funds will be used by the affiliates to purchase SMC shares for the benefit of the petitioner and ultimately of its stockholders who are the Filipino coconut farmers.

IN THE LIGHT OF ALL THE FOREGOING, the deficiency lending investors tax and fixed tax for the year 1987 in the amount of P5,649,462.95 and P4,307.75, respectively, is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals