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JOSE ESTEVA, JR,
Petitioner,

July 7/72

- versus -

C.T.A. CASES
Nos. 1717 & 1732

COMMISSIONER OF INTERNAL
REVENUE,
Respondent,
x - - - - - - - - - - - - - x

D E C I S I O N

Petitioner seeks from respondent a tax credit of ₱639.77 and ₱4,121.30 as alleged over-paid percentage tax of two (2%) per centum of his gross receipts as a common carrier for the months of November and December, 1963 and the whole year 1964.

Petitioner is a Filipino citizen. During the period pertinent to this case, he was engaged in the land transportation business. For November and December, 1963 and the year 1964, petitioner reported as gross income the sums of ₱113,234.29 and ₱735,843.00, respectively, inclusive of the amounts paid to sub-carriers and that the percentage taxes due thereon have been paid. Subsequently, petitioner requested respondent to credit him the amounts of ₱639.77 and ₱4,121.30 as alleged overpaid percentage tax. The said request for tax credit was premised on the ground that the term "gross receipts" under Section 192 of the Tax Code does not include "amounts paid by the principal carrier to other carriers for transporting the cargoes between points covered by the principal contracts." The factual background of the case are reflected in the stipulations of facts which read as follows:

C.T.A. Case No. 1717

"1. That for the months of November and December 1963, the petitioner earned and reported a total income of ₱113,234.29 from his trucking business;

"2. That by way of percentage taxes for the months of November and December, 1963, the petitioner paid to the respondent the total sum of ₱2,282.89;

"3. That during the months of November and December 1963, the petitioner made the following payments to sub-carriers, to wit:

SUB-CARRIER	DATE OF PAYMENT	AMOUNT
I. FELICULA D. LAZARO	November 8,1963	₱2,747.20
388 Gen. Luna St.	November 23,1963	2,676.80
Malabon, Rizal	December 9, 1963	2,696.00
	December 17,1963	2,158.40
II. PACIFIC EXPRESS	November 8, 1963	₱ 78.00
2557-C Juan Luna	December 19,1963	46.00
Tondo, Manila		
III. MONTEIRO TRUCKING	November 21,1963	₱ 480.00
848 Aurora Blvd.	December 5, 1963	736.00
Cubao, Quezon city		
IV. INES PAREDES LIM	November 8, 1963	₱ 344.00
17 Victoria St.	November 23,1963	256.00
Quezon city	December 9, 1963	556.00
V. MERCURY ENTER-	November 19,1963	644.00
PRISES, INC. 419 Samanillo	November 26,1963	210.00
Bldg. Escolta,	December 6,1963	1,146.00
Manila	December 16,1963	266.00
	December 27,1963	336.00
VI. ALBERTO TAN	November 7, 1963	354.00
Malabon, Rizal	November 20, 1963	266.00

	November 27,1963	₱ 336.00
	December 5,1963	904.00
	December 13,1963	1,361.00
VII. PERFECTO DE LA CRUZ	November 8,1963	₱2,879.40
	November 23,1963	5,642.40
	T O T AL . . .	₱25,119.20

(Joint Stipulation of Facts,pp. 31-32, C.T.A. rec.)

"4. That this case involves only a question of law, i.e. whether or not the amounts paid to sub-carriers are deductible from the gross trucking income of the petitioner for the months of November and December 1963, for the purpose of determining the amount due from the petitioner by way of percentage taxes under Section 192 of the Tax Code."

C.T.A. CASE NO. 1732:

"1. That from the months of January 1964 to December 31, 1964 the petitioner earned and reported a total income of ₱735,843.00 from his trucking business;

"2. That by way of percentage taxes for the months of January 1964 to December 1964, the petitioner paid to respondent the total sum of ₱14,716.82, itemized as follows:

Month	Date of payment	O.R. No.	AMOUNT
January	2/11/64	C-2248600	₱1,192.43
February	3/13/64	C-2257051	1,113.53
March	4/16/64	8873	968.43
April	5/19/64	C-2568346	1,239.71
May	6/16/64	Inv.007445	1,274.66
June	7/20/64	C-2826428	1,459.82
July	8/18/64	C-2831514	1,177.79
August	9/16/64	C-2833591	1,131.83
September	10/19/64	C-3012661	1,083.33
October	11/17/64	C-3165648	1,433.48
November	12/17/64	C-3169800	1,382.59
December	1/18/65	C-3401891	1,259.22
	T O T A L		₱14,716.82

"3. That during the months of January 1964 to December 1964, the petitioner made payments to sub-carriers, in the total sum of ₱206,066.78, itemized as follows:

1. M.G. Suntay	₱ 5,337.80
2. Apolonia Tinio.	3,481.80
3. Edgardo Donoman	82,054.48
4. Peter Pacheco (Sembros) . . .	12,749.60
5. Jacinto Ignacio	10,679.80
6. Perfecto de la Cruz	72,773.90
7. Carangal Trucking	6,951.40
8. JB Freight Service(Alberto). Tan . .	6,024.20
9. Mercury Enterprises	3,480.80
10. Monteiro Trucking	1,468.80
11. Altiveres Trucking.	98.00
12. Maria Luisa Lluige.	29.00
13. IPL Enterprises	674.20
T O T A L. . .	₱206,066.78

"4. That the only legal issue in this case is whether or not the amounts paid to sub-carriers are deductible from the gross trucking income of the petitioner for the months of January 1964 to December 31, 1964, for the purpose of determining the amount of tax due from the petitioner by way of percentage taxes under Section 192 of the Tax Code;" (Joint Stipulation of Facts, pp. 37-38, CTA rec.)

The present petitions for review were filed separately with this Court on December 16,1965 (C.T.A. Case No. 1717) and on February 10, 1966 (C.T.A. Case No. 1732) to beat the prescriptive period under Section 306 of the Tax Code.

Petitioner and respondent submitted the two cases for decision on the basis of the above stipulations of facts, court pleadings, and the B.I.R. records.

The only question posed for resolution is whether or not the amounts paid to the sub-carriers are deductible from petitioner's gross receipts for the purpose of imposing and collecting the 2% common carriers tax under Section 192 of the Tax Code.

Petitioner contends that he overpaid the percentage tax of 2% imposed on common carriers because the term "gross receipts" does not include "amounts paid by the principal carrier to other carriers for transporting the cargoes between points covered by the principal contracts, "citing as authority Revenue Ruling No. 140.02 dated June 3, 1953

Respondent maintains, however, that the percentage tax of 2% imposed upon a common carrier should be based on the total "gross receipts" derived under the contract without deducting therefrom the payments made to the sub-contractors, citing as authority the the decision of the Supreme Court in the case of F.J. Kiener Co., Ltd. vs. Comm. of Int. Rev., G.R. No. L-16417, January 31, 1963.

Revenue Ruling No. 140.02, dated June 3, 1953, which was invoked by petitioner, reads as follows:

> "In reply to your letter dated May 23, 1953, I have the honor to inform you that amounts paid by the principal carrier to other carriers for transporting the cargoes between points covered by the principal contract are not part of the gross receipts of the former for purposes of Section 192 of the National Internal Revenue Code. Under the facts illustrated in your said letter, the amounts of ₱800.00 & ₱600.00 are not parts of the gross receipts of the principal carrier under said Section 192 of the Tax Code. However, the amount of ₱100.00 & ₱500.00, respresenting expenses for lighterage, are not deductible from the gross receipts of the said carrier, for the rea-

son that they are expenses incident to the operation of its business."

Section 192 of the National Internal Revenue Code, however, provides as follows:

> SEC. 192. Percentage tax on carriers and keepers of garages.- Keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers by land, air, or water, except owners of bancas, and owners of animal-drawn two wheeled vehicles shall pay a tax equivalent to two per centum of their monthly gross receipts."(Underlining supplied.)

Under the foregoing provisions, the percentage tax of 2% imposed on common carriers is based on their monthly gross receipts. In the case of Bisaya Land Transportation Co., Inc., vs. Collector of Int. Rev. (G.R. No. L-11812 & 12100, May 29, 1959), the Supreme Court held that the percentage tax of 2% is based upon the gross receipts of the common carriers.

The term "gross receipts" means the whole, entire, total receipts, as opposed to net receipts (P.J. Kiener Co. Ltd. vs. Antonio J. Araneta, C.T.A. No. 102, citing 18 words and Phrases, Supplement p. 195); when used in relation to statute requiring motor carrier to pay gross receipts tax, it means the whole, entire, total receipts. (Id., Id., Savage v. Com. exrel. State Corp. Commission, 45 S.E. 2d 313, 317,186 VA 1012.)

In the case of P.J. Kiener, supra, the Tax Court held as follows:

> "To our mind, the fact that the tax is imposed both on a principal contrac-

tor and a sub-contractor of a single and the same construction work, the sub-contractor's tax liability being computed on the gross sum received by him from the principal contractor and the tax liability of the principal contractor being based on the total amount he received under the contract without deducting the amount paid to the sub-contractor, does not amount to imposing and collecting the same tax on the same subject matter twice. The tax imposed under Section 191 of the National Internal Revenue Code is a tax on business and occupation and is, therefore, an excise tax. What is being taxed is the act of engaging in any of the occupations or businesses covered therein. In this particular case, it is a tax on the business as contractor. The gross receipt derived therefrom is made only as the basis for the computation of the tax which which should be paid by the contractor. Hence, the tax of two (2%) per centum on gross receipts should be imposed on each and every contractor regardless of the source or sources of the gross receipts as long as the same are derived from his occupation as contractor." (Affirmed in G.R. No. L-16417, Jan. 31, 1963.)

The same doctrine should apply to common carriers because the tax imposed under Section 192 of the Revenue Code is an excise tax on business and occupation.

From the decision in the Kiener case, it is clear that the taxable gross receipts of petitioner, refer to his entire or total receipts undiminished by the amounts paid to his sub-carriers.

WHEREFORE, the petitioner's claims for tax credit are hereby denied. Without pronouncement as to costs.

SO ORDERED.

Quezon City, July 7, 1972.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge