TA Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
CEBU CITY

YUTIVO SONS HARDWARE CO.,
Petitioner,

- versus -

C.T.A. CASE NO. 64

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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April 27, 1957

D E C I S I O N

This is a petition for the review of a decision of respondent Collector of Internal Revenue assessing and demanding from the petitioner, Yutivo Sons Hardware Co., the sum of ₱1,266,176.73 as deficiency sales tax for the period covering the third quarter of 1947 to the fourth quarter of 1950, inclusive, plus 75% surcharge thereon, or a total of ₱2,215,809.27.

The parties herein entered into a partial stipulation of facts (hereinafter to be referred to as "STIFACTS" for brevity) and in addition adduced evidence, documentary and testimonial. On the basis of the facts established, it appears that after several months of investigation by revenue officers starting in July 1948, respondent on November 7, 1950, made an assessment upon petitioner and demanded from the latter ₱1,804,769.05 as deficiency sales tax plus surcharge covering a period of thirty (30) months from the third quarter of 1947 to the fourth quarter of 1949. After an exchange of memoranda between petitioner and respondent and a reinvestigation of the case having been made, respondent Collector of Internal Revenue on November 15, 1952, countermanded his demand as referred to in the aforementioned deficiency tax assessment, subject however to the general review thereof by the then Board of Tax Appeals (now defunct) pursuant to Section 8, Executive Order No. 401-A, Series of 1951 (pars. 18 and 20, STIFACTS). However, the papers relative to the case had not been forwarded to the Board of Tax Appeals nor approved by it. After another investigation, respondent, in a letter to petitioner on December 16, 1954, redetermined that the aforementioned tax assessment was lawfully due the government and in addition assessed deficiency sales tax due from petitioner for the four quarters of 1950. Hence, respondent's last demand was in the total sum of ₱2,215,809.27, detailed as follows:

	Deficiency Sales Tax	75% Surcharge	Total Amount Due
Assessment (First) of November 7, 1950 for deficiency Sales Tax for the period from 3rd Qrtr. 1947 to 4th Qrtr. 1949 inclusive	₱1,031,296.60	₱773,472.45	₱1,804,769.05
Additional Assessment for period from 1st to 4th Qrtrs. 1950, inclusive	234,880.13	176,160.09	41.

Total amount demanded per letter of December 16, 1954	₱1,266,176.73 ₱949,632.54 ₱2,215,809.27

From the last mentioned letter (decision), petitioner filed on January 19, 1955 the instant petition for review with this Court in accordance with Section 11 of Republic Act No. 1125.

In connection with the aforementioned assessments, respondent found that petitioner Yutivo Sons Hardware Co. (hereinafter referred to as Yutivo) was improperly paying its sales tax based on its sales of automobiles and trucks to Southern Motors, Inc. (Southern Motors for brevity). On the theory that Southern Motors was acting as an alter ego, instrumentality, conduit or subsidiary of petitioner, respondent determined that the sales by Yutivo to Southern Motors were not "transactions at arm's length" and that the true vendor to the public is in fact the petitioner corporation, Yutivo Sons Hardware Co. Hence, the respondent computed the sales tax liability of Yutivo upon the selling price made to the public by Yutivo's conduit (Southern Motors) and respondent accordingly assessed a deficiency sales tax from petitioner after crediting the sales tax already paid by Yutivo.

Yutivo is a domestic corporation organized in 1916 and prior to the World War 11 was engaged in the importation and sale of hardware supplies and equipment. After the war, Yutivo resumed its business and until June, 1946, bought a number of cars and trucks from General Motors Overseas Corporation (General Motors for brevity), and American Corporation licensed to do business in the Philippines, which at the time was the sole importer of GMC trucks and cars (see pars. 1, 2, 3 and 4, STIFACTS). General Motors being the importer, and its sales to Yutivo being deemed the original sales, the former paid the sales tax thereon and no further sales tax was paid by Yutivo on its sales to the public.

Meanwhile, on June 13, 1946, Southern Motors was organized for the primary purpose of engaging in the business of selling cars, trucks and spare parts. After incorporation of Southern Motors and until the withdrawal of General Motors from the Philippines in the middle of 1947, the cars and trucks purchased from General Motors were sold by Yutivo to Southern Motors, who in turn sold the same to the public in the Visayas and Mindanao (pars. 5 and 8, STIFACTS). Yutivo sold these vehicles to Southern Motors under a distributorship agreement (Exhibit GG) at a price based on the cost of the vehicles as obtained from General Motors plus a mark-up thereon determined by Yutivo. Upon the said withdrawal of General Motors, Yutivo became the exclusive importer and distributor of Chevrolet cars, trucks and spare parts for the Visayas and Mindanao. Yutivo thereafter continued with its old practice of selling vehicles to Southern Motors (pars. 16 and 17, STIFACTS). As importer, Yutivo paid sales tax on the basis of its selling price to the Southern Motors. The sales tax prescribed by Sections 184, 185 and 186 of the Tax Code being collected only once on original sales, Southern Motors paid no sales tax on its sales to the public.

Upon a review of the transactions between Yutivo and Southern Motors, respondent Collector determined that the latter was a mere instrumentality of the former. Hence, for purposes of determining the proper sales tax due the government, respondent disregarded the corporate personality of Southern Motors and considered the sales by it to the public as the proper taxable sales of Yutivo. The deficiency sales tax assessment now in dispute in this case is contested by petitioner on several grounds and the issues in this case being centered upon them, we briefly state the same thus:

> (1) That there is no valid ground to disregard the corporate personality of Southern Motors and to hold that it is an adjunct of petitioner Yutivo;
>
> (2) Assuming that the separate personality of Southern Motors be disregarded, that the sales tax already paid by Yutivo should first be deducted from the selling price of Southern Motors in computing the sales tax due on each vehicle;
>
> (3) That the surcharge has been erroneously imposed by respondent; and,
>
> (4) That the assessment of the sales tax in question has already prescribed:

We will discuss these grounds in the order given:

It is a rule that a corporation has a juridical personality distinct from the persons, natural or juridical, that compose it. However, being a statutory creation, the corporation must exist and operate only for legitimate ends. Hence, when the notion of corporate entity is employed to defeat public convenience, or to commit fraud or wrongful acts, the law recognizes the need for protecting the interest of justice by "piercing the veil of corporate fiction and looking beyond the corporate form to the actual enterprise". Among the instances in which this step is resorted to is when it is to prevent fraud upon the collection of government revenues. There is no hard and fast rule in this particular step, but in any case however, the matter is dependent upon the facts and circumstances in each case.

Yutivo, a domestic corporation, was organized in 1916 with an authorized capital stock of ₱600,000.00 divided into 600 shares with a par value of ₱1,000.00. At the time of its incorporation, 421 shares were subscribed and fully paid, of which 20 shares were in the name of Jose Palanca Yutivo, 295 shares in the name of his two sons Yu Tiong Sing and Yu Tiong Y (alias Yu Tiong Yee), 105 shares in the name of Yu Tiong Cuan (Yutivo's nephew) and 1 share in the name of Albino Sycip. These five persons were Yutivo's first directors (Exhibit 61).

The original stockholders had gradually passed on their stocks to the younger generation and additional issues of shares were acquired by them. To understand the various transfers and issues of stocks in Yutivo as well as in Southern Motors we give below the family tree of the Yu (Yutivo or Young) family, subdivided into four main branches consisting of the families of the brothers Yu Tiong Yee and Yu Tiong Sin, their first cousin Yu Tiong Cuan and their other relatives.

1. Yu Tiong Yee (Yu Tiong Y) m. Lim Kiok (or Lim An Siu)

   A. Yu Khe Thai m. Mina C. Yu (Mine Yu or Mina Chang Liang)
      1. Yu So Kheng (Helen Yu Sycip) m. David Sycip
      2. Yu So Hui (Betty Y. Lee)
      3. Yu So An (Anne Yu Sycip) m. Washington Sycip
      4. Yu Heng Kian (Francisco Yu or Francis Yu)
      5. Yu Heng Chiu (William Yu)

   B. Yu Khe Siong m. Hoh Yau Wa
      1. Yu Seng Tiok
      2. Yu Su Tiok

   C. Yu Khe Jin m. Sophia H. Yu (Sophia Huang or Sophia Huang Yu)
      1. Yu Yek Ti (Jimmy Yu)
      2. Yu Siok Chu
      3. Yu Beng Tek (Yu Tek Siu)

   D. Yu Khe To m. Louise Huang Yu

   E. Yu Khe Tat (Yu Khe Tal) m. Go Siu Lim
      1. Yu Seng Un

   F. Yu Khe Tong

   G. Yu Chai Luan (Yu Chay Luan or Yu Choi Luan or Young Choi Leun) m. Dalton Chen
      1. Margaret Chen (Chen Pi Yau or Pi Yao Chen)
      2. Piling Chen (Chen Pi Ling or Pi Ling Chen)
      3. Alice Chen (Chen Pi Yu or Pi Yu Chen)
      4. Betty Chen (Chen Pi Chi or Pi Chi Chen)
      5. Willand Chen
      6. Chen Chon Sen

   H. Yu Chiau Ti (Yu Chiao Ti) m. Huang Chen Jung (C. J. Huang)
      1. Dorothy Huang
      2. Bessie Huang
      3. Marcial Huang
      4. Huang Yin Chan

I. Yu Been Kiat m. Simeon Sy

J. Yu Bi Chiu (Yu Bi Chu) m. Frank Chou (Chou Pek Lok)

K. Yu Bi Yong m. Poon Tso Chat

L. Yu Bi Hiao m. Tsai I Gan (John Tsai)

M. Yu Bi Gan

N. Yu Tiam (Yu I. Tiam or Yu Keh Hong
m. Uy Lam
1. Yu Chiao Chin (Nelson Yu)
2. Yu Chiao Chiok
3. Yu Chiao Chun
4. Yu Chiao Chong
5. Yu Chiao Hui
6. Yu Chiao Liok
7. Yu Chiao Peng
8. Yu Kim Eng
9. Yu Kim Hoe (Yu Kim Hae)
10. Yu Kim Khoan

II. Yu Tiong Sing m. Uy Sio

A. Yu Eng Poh (Paul Young) m. Khu Kiam Kiam
1. Virginia Young Teehankee (Siu Lan)
2. Lillian Young (Siu Kim or Lillian Y. Dee)
3. Diana Young (Siu Hoa)
41 Elsie Young (Siu Uan)
5. Ellen Young
6. Catherine Young (Siu Han)
7. Ingrid Young (Yu Siu Tien)
8. Dorothy Young (Yu Siu Lo)
9. Alexander Young
10. Yu Siu Young

B. Yu Eng Sek m. Lim Giok Un

C. Yu Eng Ting (Yu Eng Tin) m. Lim Guat Cheng
1. Yu Nga Lian
2. Yu Nga Han
3. Peter C. L. Yu

D. Yu Eng Liong m. Nancy Tsok Young (Nancy Young or To Pek Tin or Peck Suan)

E. Yu Eng Hock m. Uy Sai Liu

III. Yu Tiong Cuan

A. Yu Cheng Thim
1. Yu Eng Lok
2. Yu Eng Siong

B. Yu Cheng Pho m. Lim Lian Eng

C. Yu Chang Kho

D. Yu Cheng Hui

E. Yu Cheng Hoay (Yu Cheng Hoai)

F. Yu Leng Bian

IV. (Relatives)

A. Yu Chong Tek m. Ong Bi Li
1. Gloria Yu (Gloria Yu Ka Chu)
2. Paulino Yu (Yu Ka Oan or Ka Oan Yu)
3. Alice Yu (Alice Ka Ho Yu)
4. Alexander Yu (Ka Kheng Yu or Alexander Yang)

B. Yu Ki San
1. Yu Ki Suy
2. Yu Ki Liong (Yu Ki Yong)
3. Yu Leng Tuan
4. Yu Tiao Hian
5. Yu Tiao Khun
6. Yu Tiong Tit
7. Yu Phi Hong
8. Yu Phi Khim

There were two subsequent increases in Yutivo's authorized capital stock such that, as of June 13, 1946, it had an issued capital stock of ₱3,000,000.00 divided into 30,000 shares with a par value of ₱100.00 each. In 1948, Yutivo's capital stock was increased to ₱6,000,000.00 divided into 60,000 shares with a par value of ₱100.00. Of this, there were 50,000 shares outstanding and issued as of the end of the year 1948 and continued to be so during the year 1949 (see Exhibit "C"). The stockholders of record of Yutivo as of various dates have been covered by the partial stipulation of facts but generally it can be said that most of the stockholders are members of the Yu (Yutivo or Young) family, whose names are listed above, and majority of the shares are held by them.

Although prior to the war Yutivo was generally limited to the hardware business, the following extract of the purpose clause of its articles of incorporation (Exhibit EEE) permits it to engage in the purchase and sale of all kinds of merchandise, including that of motor vehicles.

> ". . . comprar, vender, importer, exporter y transportar articulos de ferroteria, y efectos navales de todos clases productos del pais y del extranjero; operar negocio de ventas al por mayor y menor de mercancias en general e importar, exportar y negociar en toda clase de mercancias; . . ."

Meanwhile, Southern Motors was organized on June 13, 1946 to engage in the business of selling vehicles, with an authorized capital stock of ₱1,000,000.00 divided into 10,000 shares with a par value of ₱100.00 (par. 5, STIFACTS; Exhibit W). At the time of its incorporation, 2,500 shares (equal to ₱250,000.00) appear to have been subscribed in five (5) equal proportions by Yu Khe Thai, Yu Khe Siong, Yu Khe Jin, Yu Khe Siong and Washington Sycip. Yu Khe Thai, Yu Khe Siong and Yu Khe Jin, as shown by the above family tree, are brothers, being sons of Yu Tiong Yee, one of Yutivo's founders. Yu Eng Poh and Washington Sycip are respectively sons of Yu Tiong Sing and Albino Sycip (Exhibit 71-G), the latter two being also co-founders of Yutivo. According to the Articles of Incorporation, of the said subscriptions, ₱62,500.00 was paid by the aforementioned subscribers, but the fact is the said sum was advanced by Yutivo under CBIAC Check No. C25217 dated June 12, 1946 issued in favor of Southern Motors (par. 7, STIFACTS; Exhibit 31). A review however of Yutivo's books of accounts manifests the absence of a record of said disbursement. The explanation given by petitioner's principal officer and star witness Yu Khe Thai in answer to a question as to why payment was advanced by Yutivo was that -

> "at the time we have not yet decided how many stockholders will Yutivo want to subscribe shares for the Southern Motors and how much each of them was able to subscribe".

This statement is significant. Note that witness declared "we have not decided", indicating that it was Yutivo who had the power to determine who the subscribers of Southern Motors shares would be and to apportion such holdings among them. This declaration clearly indicates that such shares were in fact to be held nominally for Yutivo. It also discloses that Messrs. Yu Khe Thai, Yu Eng Poh, Yu Khe Siong, Yu Khe Jin and Washington Sycip were merely nominal subscribers of Southern Motors' stock, holding the same as mere trustees of Yutivo or the nominees that Yutivo would or might subsequently name. In fact three months after Southern Motors was organized and following a resolution adopted on September 25, 1946 (Exhibit E), the records of Southern Motors show that on September 30, 1946 the subscribed capital stock was reallocated in the following manner:

	Original Allocation per Articles		After Re-allocation	
	No. of Shares	Percentage	No. of Shares	Percentage
1. Yu Khe Thai, Yu Khe Siong, Yu Khe Jin, Yu Eng Poh, Washington Sycip	2,500	100%	700	28%
2. Yutivo Hardware Co.	0	0	1,250	50%
3. Huang Chen Jung, Dalton Chen, Yu I Tiam, Yu Chong Teck, Yu Cheng Kho, Ng Sam Bok	0	0	550	22%

The fact that Yutivo, although not an original subscriber in the articles did actually subscribe to and appears to own at least 50% of Southern Motors' capital stock as reallocated demonstrates Yutivo's power and control over Southern Motors capital stock, its incorporators and/or stockholders nominally appearing in its charter. Moreover, it appears that Yutivo has been able to bring in additional or new stockholders under petitioner's declaration that they had not at first been decided as to who would be the subscribers. Under the re-allocation, all stockholders were allegedly required to make full payment of their respective subscriptions. Here again, Yutivo paid for whatever was due on all the shares subscription without an actual transfer of funds from Yutivo to Southern Motors for this purpose. This was done according to petitioner by merely an accounting entry, crediting in the books of Yutivo in favor of Southern Motors the sum of ₱187,500.00 and bringing the total payments by Yutivo to ₱250,000.00. It was explained that a mere accounting entry was sufficient because it would avoid the actual transfer of cash by Yutivo to Southern Motors, which cash would ultimately be returned to Yutivo in pursuance of arrangement previously made to the effect that Southern Motors' cash would be held in deposit by Yutivo. For the share subscription, Yutivo in turn made a corresponding accounting entry in its books, charging the accounts of the aforementioned individual subscribers for the amount allegedly advanced by Yutivo in payment of the shares. In other words, Yutivo had control of both purses -- a "payment" to Southern Motors, allegedly a corporation separately organized, which nevertheless is kept in the coffers of and under the control of Yutivo and the share subscriptions, allegedly made by the designated subscribers, which are effected by mere charges against the individual accounts of the latter. Whether a charge was to be made against the accounts of the named subscribers or said subscribers were to subscribe shares, there being no showing that they initiated the subscription, appears to constitute a unilateral act on the part of Yutivo. Moreover, in the case of Ng Sam Bok who had 50 shares in his name as original subscription, he had neither a charge account with Yutivo nor with Southern Motors. Even the charge in Yutivo's cash book shows that said share subscription was to be collected from his future contingent account with Southern Motors (Exhibit AAA-1-s), thus giving rise to an obligation of Ng Sam Bok of doubtful character. In fact, the 1,200 shares recorded in the name of Ng Sam Bok (Certificates Nos. 12, 17, 33, 63 and 83 of Exhibit GGG and Certificates Nos. 116 and 150 of Exhibit HHH), and allegedly issued to him have not been acknowledged by him. Of course, petitioner alleges that proper charges have been made against his account, but the making of the charges is a mere unilateral act of Yutivo, self-serving upon it. On the same vein are the shares recorded in the name of Huang Chen Jung. Like that of Ng Sam Bok, the taking out of shares subscription in Southern Motors was effected by Yutivo alone by making charges against the account of Huang Chen Jung in alleged payments thereon. The taking out of the shares subscription and the transfer and issuance of 2,400 shares (Certificates Nos. 3, 25, 44,58 and 77 of Exhibit GGG, Exhibit GGG-5 and Certificate No. 146 of Exhibit HHH) were also made through unilateral acts of Yutivo.

As we have stated earlier, the original subscriptions to Southern Motors' capital stock by the named or designated stockholders, Yu Khe Thai, Yu Khe Jin, Yu Khe Siong, Yu Eng Poh and Washington Sycip were made by them in behalf of Yutivo and should be deemed as held by them in the concept of trustees of Yutivo. Although a re-allocation of the original subscription was made on September 30, 1946, the same did not lose the character of being held in behalf of Yutivo. This fact should apply with greater force to those shares recorded in the names of Huang Chen Jung, Dalton T. Che, Yu I Tiam, Yu Chong Teck, Yu Cheng Kho and Ng Sam Bok, considering the fact that the subscription and transfer of said shares were unilaterally effected by Yutivo. Petitioner argues that these stockholders were as such <u>bona fide</u> and in fact paid for their shares. In the case of Ng Sam Bok, who allegedly subscribed 50 shares (₱5,000.00), it is readily seen that "payments" were effected in Yutivo' Cash Book by accounting entry (see Exhibit AAA-1-x) in which "Southern Motors (Ng Sam Bok)" was debited for ₱5,000.00 and ₱5,000.00. In simple terms, this is a statement -- "Southern Motors owes us (Yutivo) ₱5,000.00 and Yutivo owes Southern Motors ₱5,000.00" -- made by Yutivo. Petitioner argues that payment was made by such "charge" against Ng Sam Bok. We find this to be an anomalous transaction for the reason that a payment cannot obviously be made by a unilateral act of Yutivo even where the act was sanctioned by Southern Motors. There is nothing in the record to show that Ng Sam Bok agreed to this fact. In the case of all the other subscribers (except Washington Sycip), a similar accounting entry was made by Yutivo under which it "advanced" funds to Southern Motors to cover payment of Southern Motors' shares and accordingly charged the individual subscribers for such amounts. It should be noted that the transaction was made solely by and between Southern Motors and Yutivo. In effect, it was Yutivo who undertook the subscription of shares, employing the persons named or "charged" with corresponding account as nominal stockholders. There is no showing that these named shareholders were *bona fide* subscribers and had asked Yutivo to make such advances. On the other hand, Yutivo has exercised an unusual interest in all their subscriptions, underwriting payments thereon. Of course, Yu Khe Tai, Yu Khe Jin, Yu Khe Siong and Yu Eng Poh were manifestly aware of these subscriptions, but considering that they were the principal officers and constituted the majority of the Board of Directors of both Yutivo and Southern Motors, their subscriptions to Southern Motors capital stock in 1946 could readily or easily be that of Yutivo's. Moreover, these persons were related to each other as brothers or first cousins. There was every reason for them to agree in order to protect their common interest in Yutivo and Southern Motors.

On February 25, 1947, the issued capital stock of Southern Motors was increased with an 80% stock dividend (or ₱200,000.00) but as we have stated above, the original shares issued to the named subscribers were merely in trust for or held in behalf of Yutivo. It would therefore follow that the stock dividends which were fruits of, and sprung from, the original or principal shares were likewise merely held by them for Yutivo. On March 8, 1947, the issued capital stock was increased by an additional subscription of ₱50,000.00 in 500 shares made by various persons. Except as regards Ng Sam Bok and David Sycip, "payments" thereof were effected by merely debiting or charging the accounts of said stockholders and crediting the corresponding amounts in favor of Southern Motors, without actually transferring cash from Yutivo to Southern Motors or from the stockholders to Yutivo. It will be noted that again in this instance, the "payments" were effected by the mere unilateral act of Yutivo. Also, there is no showing that the designated subscribers did in fact subscribe to the stock. Yutivo, by virtue of its control over the individual accounts of the persons charged, would necessarily exercise preferential rights and control, directly or indirectly, over the shares, it being the party which really undertook to pay or underwrite payment thereof. There is no showing that the stock certificates were actually issued to them, for as a matter of fact the certificates were "issued" without any receipt or acknowledgment by them. The subscription being founded upon Yutivo's unilateral acts, there is nothing to prevent Yutivo from subsequently negating it by merely declaring that there was no consideration therefore. And above all, although no charging of accounts had as yet been made by Yutivo nor payment made by the designated subscribers on February 28, 1947, the certificates of stocks have already been issued on that date, at least nine (9) days before the alleged payment. This act, presumably made upon the authorization of Yutivo who was the "guarantor" or "banker" for such subscriptions, only serve to prove that Yutivo's will could prevail over Southern Motors and said stockholders, as well.

Meanwhile, there were three additional increases in the capital stock of Southern Motors, all of which were effected by stock dividends in the years 1948, 1949 and 1950, respectively, at 100%, 100% and 50% on the outstanding shares. However, if the stockholder of record was, as we pointed above, a mere trustee of the shares for and in behalf of Yutivo it would follow that the stock dividends, which constituted investments or existing shares, would also be held by the distributees in trust for and in behalf of Yutivo.

Petitioner, in turn tried to show that it was not at any time holding the majority of the shares in Southern Motors, rather it had transferred its shares to other stockholders. In this connection, we give below a tabulation of shares purportedly transferred by Yutivo to and thereafter recorded in the name of the designated shareholders:

	1947 Transfer from Yu-tivo Cert. No. 1	1947 Transfer from Yu-tivo Cert. No. 23
Yu Eng Poh	50	
Yu Huang Chen Jung		
Ng Sam Bok	50	
Yu Cheng Poh		50
Yu Seng Tiok		150
Yu Su Tiok		150
Yu Heng Kian		75
Yu Heng Chien		75
Yu So Kheng Sycip		50
Betty Yu Lee		50
Huang Yen Cheng		100
Chen Chon Sen		100
Yu Khe Jin		100
Yu So An		50
Alexander Young		50
	100	1000

	1949 Transfer from Yutivo Certs. Nos. 13', 47'' and 74'''
Mina Yu	133'
Yu Heng Kian	100'
Yu Heng Chin	100'
Yu So Kheng Sycip	66'
Betty Y Lee	67'
Yu So As	67'
Yu Seng Tiok	133'
Yu Su Tiok	134'
Ty Tek Ti	200'
Yu Tiok Chu	200''
Alexander Sycip	266''
Yu Chai Loan	133''
Yu Chian Ti	134''
Yu Chiao Peng	66''
Yu Chiao Chong	67''
Yu Chiao Chun	66'''
Ng Sam Bok	200'''
Yu Cheng Pho	67'''
Yu Khe Tat	134'''
Yu Cheng Kho	133'''
Yu Be Chu	134'''
Yu Bi Hiao	133'''
Yu Bi Hong	134'''

Yu Cheng Hoai	133'''
Yu Cheng Hui	134'''
Yu Leng Bian	133'''
Lilian Young	33'''
Elsie Young	33'''
Ellen Young	33'''
Ingrid Young	34'''
Alexander Yu	200'''
	3600

These transfers of shares were effected in 1947 and 1949. The transfer made in 1947 was effected largely, if not wholly, by unilateral acts of Yutivo. Consideration to Yutivo for such transfer was obtained by alleged charges to the individual charge accounts of the transferees in Yutivo's books. We find, however, that each transferee did not initiate or acknowledge the charging of his account, and in fact there is no signature of acknowledgment thereof in the stock certificate or stock and transfer book of the person concerned to show that the certificate of stock was actually transferred to him. As regards the transfer made on March 17, 1947 by Yutivo of its 1,000 shares under stock Certificate No. 23 (stock dividend of March 1, 1947), the same was allegedly distributed to those persons who sacrificed their private financial resources to aid and maintain Yutivo employees during World War 11. As these shares were received by way of stock dividends, no entry thereof was made by Yutivo on its books. The obligation is admittedly a purely moral obligation but petitioner alleged it has benefited from such humanitarian work.

Nevertheless, we find that this transfer was not altogether above board. The shares, although received as stock dividends, had proprietary value, especially considering that they involved voting rights in the corporation as well as rights to receive future profits from the corporation by way of dividends. The petitioner had converted a supposed moral obligation into one which became material, and by recognizing the same thereby created a civil one. There was in effect a remuneratory donation and in view of the absence of an acceptance no valid transfer was effected. This is so considering the fact that the shares were unilaterally registered by Yutivo in the names of the recipients. This is more particularly true in the case of Chen Chon Sen who appears to be a fictitious person as will be discussed hereafter. Even assuming that Chen Chon Sen existed, yet he could not have accepted the same as he was never in the Philippines nor has he manifested such acceptance. Moreover, no where is there a showing that this act was officially adopted by Yutivo's board of directors. We are therefore of the belief that the aforesaid transfers are fictitious.

It is likewise worthy of note that even the certificates of stock issued to the above-enumerated persons for the stock dividends authorized in 1948 and 1949 also show no acknowledgment of their issuance and transfer. It is equally important to bear in mind further that the aforementioned stockholders are immediate relatives (children, wife, husband, brother or sister) of the Yutivo directors or principal stockholders, and would therefore be convenient dummies of Yutivo. Moreover, as regards the 4,000 shares of stock owned by Yutivo in Southern Motors under Certificate of Stock Nos. 13, 47 and 74, special mention should be made of the circumstances surrounding their transfer. According to petitioner, these shares were transferred to the persons after properly charging them for the par value thereof. In consideration of these transfers, Yutivo allegedly received promissory notes issued by the transferees (see Exhibits 68-M, 68-A to 68-Z inclusive, Exhibits 68-AA to 68-DD, inclusive, Exhibits Z-1, Z-2 and Z-3). Except for a few of them, most of these notes were signed in behalf of the promissors, who were the transferees of the stocks, by their brothers or fathers. This fact strongly corroborates our previous finding that these transferees were more dummies of Yutivo who serve as the nominal stockholders. Petitioner's allegation that Yutivo accepted these signatures and relied on the signatories is not creditable. It confirms our observation and conclusion that petitioner made use of persons as dummies in order to further its purpose of owning and keeping shares. Moreover, in view of the relationship existing between the transferees or promissors and the principal officers of Yutivo, the former, under the circumstances would not be unwilling tools to camouflage the scheme of concealing Yutivo's ownership thereof.

Considering all related circumstances, we are therefore of the opinion and do not hesitate to so hold that the above named persons are mere nominal stockholders holding the shares for and in behalf of Yutivo. For the reason previously given above, it follows that the shares received in the concept of stock dividends by the above named persons are similarly held in trust for Yutivo. Even if we were to concede arguendo that Yu Khe Tai, Yu Khe Siong, Yu Khe Jin, Washingtonor David Sycip were stockholders bona fide, the remainder of the shares held by other individual stockholders, who are mere dummies of Yutivo, when added to the shares recorded in Yutivo's name will show that Yutivo was at all times in control of the majority of the stock of Southern Motors and that the latter was a mere subsidiary of the former. We give hereunder the percentage of Yutivo's shareholders, after granting that Yu Khe Thai, Yu Khe Jin, Washington Sycip, etc. are stockholders bona fide, and considering the stockholders, who are such by the unilateral acts of Yutivo, as dummies of Yutivo and the Yutivo (Yu or Young) family.

	Total shares in Yutivo's name	Total shares of Yutivo's dummies	Total shares owned	Percentage of ownership
As of September 1940				
Cert. No. 1	1,250			

Shares in the names of Huang Chen Jung, Ng Sam Bok and Yu Eng Poh		300	1,550	62%
<u>As of February 1947</u>				
Cert. No. 13	1,000			
Shares in the names of Yu Eng Poh, Huang Chen Jung, Ng Sam Bok and Yu Cheng Poh		450	1,450	58%
<u>As of March 17, 1947</u>				
Cert. No. 13	1,000			
Shares in the names given above plus those in the names of Yu Seng Tiok, Yu Su Tiok, etc. (Certs. Nos. 35 to 46)		1,510	2,510	52%
<u>As of February 28, 1948</u>				
Cert. Nos. 13 and 47	2,000			
Shares held in the names given above plus those names in Certs. Nos. 48 to 73 except Yu Khe Thai, Yu Khe Jin, Yu Khe Siong, Yu Khe To, Yu I Tiam and Dalton Chen		3,660	5,660	56.6%
<u>As of July 1, 1949</u>				
After stock dividends - Transferees of Certs. Nos. 13, 47 and 74 are dummies. No change			11,320	56.6%
<u>As of February 2, 1950</u>				
After stock dividends - No change			16,980	56.6%

Incidentally, it should be observed that the investigation of this case by revenue officers started about the middle part of 1948. Thereafter, besides petitioner itself, the other recorded stockholders holding substantial shares in Southern Motors began diffusing their shareholdings by transferring the same to their immediate relatives - either to their respective spouses and children or sometimes brothers or sisters. Thus, in 1949, the following transfers were effected:

Yu Khe Siong - 600 shares to his wife Hoh Yau Wa.

David Sycip - 400 shares to his brother Alexander Sycip.

Likewise important to be taken note of is the fact that shares allegedly subscribed by Chen Chon Sen (Certs. Nos. 42 and 53) in 1947 and 1948 were transferred to his father in 1949. Chen Chon Sen is allegedly the son of Dalton Chen and Yu Chai Luan (sister of Yu Khe Thai) but has never been in the Philippines and has always been in China. The Income Tax returns (Exhibit 73-1) and Alien Certificate of Registration (Exhibit 71-B) do not show that he has a son by that name. It is manifest that he was a fictitious persons and a mere dummy of Yutivo after considering further that shares purportedly issued to him were without consideration.

In 1950, the followihg similar transfers were effected:

Y u Khe Thai - 800 shares to his wife Mina C. Yu

Yu Khe Jin - 200 shares to his won Yu Yek Ti; 200 shares to daughter Yu Siok Chen and 500 shares to his child Yu Beng Tek.

Dalton Chen, whose wife is Yu Chai Luen, sister of Yu Khe Thai - 400 shares to daughter Piling Che, 400 shares to daughter Margaret Chen, 400 shares to daughter Betty Chen; and

Yu Cheng Teh a close relative of Yu Khe Thai and a director of Yutivo - 100 shares each to his three daughters Gloria Yu Ka Chu, Alice Yu Ka Ho and Pauline Yu Ka Gan.

In the succeding years (1951-1952) most of the principal stockholders actually diffused their shareholdings in Southern Motors by transferring them to immediate relatives who were either their spouses or children or in a few instances brothers or sisters. These transfers were in addition to those effected by petitioner Yutivo on its shares in Southern Motors which as earlier stated were transferred to immediate relatives of persons who constituted the controllihg stockholders, directors and officers of Yutivo - children of Yutivo's founders, brothers Yu Tiong Yee and Yu Tiong Yee and Yu Tiong Sing and their cousin Yu Tiong Cuan. Thus the transferees thereof were largely the children of Yu Tiong Yee, Yu Khe Thai, Yu Khe Siong, Yu Khe Jin, Yu Khe To, Yu Khe Tat, Yu Tiam, Yu Chai Ti (including those in the name of husband, Huang Chen Jung), Yu Chai Luan (including those in name of husband Dalton T. Chen, Yu Be Chu, Yu Bi Hiao, Yu Bi Yong, Yu Bi Gan; children of Yu Tiong Sing - Yu Eng Poh, etc. and the children of Yu Tiong Cuan -- Yu Cheng Kho, Yu Cheng Pho, Yu Cheng Hoai, Yu Cheng Hui and Yu Ling Bian. And even after 1950, many of these transfers were effected by conveyances to persons who were still minors, some by donations to them. Following a similar pattern during the same period 1948, 1949 and 1950, a like change was effected by the stockholders of Yutivo's capital stock whereby the large holdings of the principal stockholders were split up into smaller holdings recorded in the names of the children, spouses or brothers and sisters of the transferor-stockholder. This pattern of diffusing stock ownership both in Yutivo and Southern Motors was evidently conceived to avoid the investigation then conducted by revenue authorities. Despite these purported changes in stock ownership in both corporations, the Board of Directors and officers of both corporations remained unchanged and Messrs. Yu Khe Thai, Yu Khe Siong, Yu Khe Jin and Yu Eng Poh (all of the Yu or Young family) continued to constitute the majority in both boards. All these merely serve to corroborate the fact that there was a common ownership and interest in these corporations and that the principal stockholders had to effect the transfer in order to conceal the true ownership thereof by Yutivo of Southern Motors and/or the ownership of both corporations by the Yutivo (Yu or Young) family.

The second aspect of the issue relates to the question as to whether the acts and transactions of Yutivo and Southern Motors were such that the Southern Motors was a mere agent, instrumentality, subsidiary, conduit or alter ego of the former.

At the outset it is to be observed that Southern Motors is under the management and control of Yutivo by virtue of the management contract entered into between the two parties (see p. 26, Folder No. 3, BIR rec.). In fact, the controlling majority (4 out of 7) of the Board of Directors of Yutivo -- Yu Khe Thai, Yu Ke Gin, Yu Ke Shong and Yu Eng Poh - - is also the controlling majority (4 out of 5) of the Board of Directors of Southern Motors. At the same time the principal officers of bother corporations are identical as may be seen below.

YUTIVO

1946 - 1948	1948 to present
Yu Tiong Yee - President	Yu Khe Thai - President and Gen. Manager
Yu Khe Thai - Gen. Manager	Yu Eng Poh - Treasurer
Yu Eng Poh - Treasurer	Alexander Sycip - Secretary
Alexander Sycip - Secretary	

SOUTHERN MOTORS

1946 up to the present

Yu Khe Thai - President & Gen. Manager
Yu Eng Poh - Vice President
Yu Khe Siong - Vice President
Yu Khe Min - Treasurer
Alexander Sycip - Secretary

In addition, both corporations have a common comptroller in the person of Simeon Sy, husband of Yu Been Kiat who is in turn the sister of Yutivo's president, Yu Khe Thai. There is therefore no doubt that by virtue of such control, the business, financial and management policies of both corporations could be directed towards common ends. Another aspect relative to Yutivo's control over Southern

Motor's operation relates to its cash transactions. All cash assets of Southern Motors were handled by Yutivo and all cash transactions of Southern Motors were actually maintained through Yutivo. Any and all receipts of cash by Southern Motors including its branches were transmitted or transferred immediately and directly to Yutivo in Manila upon receipt thereof. The cash receipts thereof are correspondingly issued by Yutivo and entered in the Daily Collection Report Exhibits 1 and 2), which is the basis of entries in Yutivo's cash receipts books, with a corresponding credit to the account of Southern Motors. All receipts are posted by Yutivo in its customers ledger and it also keeps the corresponding sales invoices of cars and trucks sold to Southern Motors. However, no copy of the receipt is furnished Southern Motors and no detailed entry is made thereof in the books of Southern Motors except for a summary entry of the same (Exhibit CCCQ). Likewise, all expenses, purchases or other obligations incurred by Southern Motors are referred to Yutivo which in turn prepares the corresponding disbursement vouchers and payments in relation thereto, the payment being made out of the cash deposits of Southern Motors with Yutivo if any, or in the absence thereof which occurs generally, a corresponding charge is made against the account of Southern Motors in Yutivo's books. The payments for and charges against Southern Motors are made by Yutivo as a matter of course and without need of any further request, the latter would advance all such cash requirements for the benefit of Southern Motors. Any and all payments and cash vouchers are made on Yutivo stationery and made under the authority of Yutivo's corporate officers, without any copy thereof being furnished to Southern Motors (Exhibit CCCC). All detailed records such as cash disbursements -- expenses, purchases, etc. -- for the account of Southern Motors are kept by Yutivo and Southern Motors merely keeps a summary record thereof on the basis of information received from Yutivo.

All the above plainly show that cash or funds of Southern Motors, including those of its branches which are directly remitted to Yutivo, are placed in the custody and control of Yutivo, and subject to withdrawal only by Yutivo. Since cash transactions are the most frequently recurring type of transactions entered into by a business and cash is readily converted into other types of assets, it is evidently in line with man's acquisitive instinct (Yutivo in this case) to adopt the afore-described "special control measures" to regulate adequately Southern Motors activities towards Yutivo's ends or purposes. Southern Motors' resources being under Yutivo's control, the former's operations and existence became dependent upon the latter and we may aptly apply the adage here that "he who controls the purse controls the person".

Consideration of various other circumstances, specially when taken together, indicates that Yutivo treated Southern Motors merely as its department or adjunct. As described above, the accounting system maintained by Yutivo shows that it maintained a high degree of control over Southern Motors accounts -- control of the centralized type, as though the latter was a branch of the former. Respondent contends that Yutivo employed the system of branch accounting in its dealings with Southern Motors. On the other hand, petitioner argues that the accounting system could not be that of branch accounting in that no profits of the alleged branch (Southern Motors) are remitted to and become the profits of the home office (Yutivo). On the basis of strict accounting practice and procedure Yutivo had not completely adopted the branch accounting in its dealings with Southern Motors, for to do so would obviously result in an admission of respondent's view. However, if we were to view the whole system, we believe and find that except for a few alterations which were effected so as not to make the matter so obvious, the accounting system usually employed by the home or principal office in dealing with its branches had been followed by Yutivo in relation to Southern Motors. A review of petitioner's accounting system as described by it (Exhibit CCCC) shows that Yutivo had adopted generally the methods ordinarily employed in branch accounting of the highly centralized control type. Under this method, the principal office (Yutivo) maintains detailed accounting records of branches (Southern Motors and its branches) on the basis of detailed reports and supporting data submitted by said branches (Southern Motors and its branches in Cebu, Iloilo, Bacolod and Davao). Thus daily or periodical but detailed reports of sales and cash collections are submitted to the home office by the branches which deposits the same in its (Yutivo's) bank account subject to the withdrawal only by the home office (Yutivo) upon its vouchers duly prepared and approved by it. In fact, the branches (Southern Motors branches) usually held very limited cash funds for petty cash expenditures. Furthermore, as an additional practice, the home office (Yutivo) keeps subsidiary records of the financial transactions of its branches (Southern Motors) and the latter generally keeps accounting records on a summary basis depending solely on information obtained from Yutivo (see pp. 5.42-5.43, "Accountant's Handbook", 4th Revised Ed. by Wixon & Kell, formerly "accountant's Handbook, 3d Ed. by Paton). Under the system of branch accounting the home office maintains in its books an account called "Branch Office -- Current" and the branch correspondingly keeps in its books an account of "Home Office - Current". Under the system employed by petitioner, it keeps an account of "Southern Motors - Current" and correspondingly Southern Motors maintains the reciprocal account entitled "Yutivo - Current" (see Exhibit CCCC). To this account is debited and credited, as the case may be, the "sales" of cars and trucks by Yutivo to Southern Motors and the collections of Southern Motors branches which are remitted directly to Yutivo. Likewise, any and all expenses or other disbursements are effected by Yutivo for Southern Motors' operations since all cash funds are kept by and are under the control of Yutivo. It is argued by petitioner that interest is paid by Yutivo at 6% on Southern Motors' deposit and Southern Motors paid Yutivo 10% on advances made to Southern Motors pursuant to a resolution dated September 25, 1956 (Exhibit D) and therefore such business transaction or arrangement reflects the separateness of the two entities, Yutivo and Southern Motors. Nevertheless, it is to be noted that this resolution is a mere unilateral act of Southern Motors. While it may have been impliedly accepted by Yutivo, the same would not materially alter the financial situation as the interest would be merely income and expense in relation to each without any sum getting out of Yutivo's coffers or control. In sum, all transactions between Yutivo and Southern Motors are recorded and effected by mere debit or credit entries against the reciprocal account maintained in their respected books of accounts and indicate the dependency of Southern Motors as a branch upon Yutivo.

> "The act of one corporation crediting or debiting the other for certain items, expenses or even merchandise sold or disposed of is perfectly compatible with the idea of the domestic entity being or acting as a mere branch, agency or subsidiary of the parent organization. Such operations were called for any way by the exigencies or convenience of the entire business. Indeed, accounting operations such as these are inevitable, and have to be effected in the or-

dinary course of business, wherever the home office of a business enterprise extends its trade to another land through a branch office, or through another scheme amuounting to the same thing." (Koppel vs. Yatco, 77 Phil. 496, 511-512).

Also mentioned above, however, is the fact that the profits of the branches (Southern Motors) are not remitted to the home office (Yutivo) nor taken up annually or periodically in its books. This business practice is obviously resorted to, otherwise the system would patently become branch accounting and thereby defeat Yutivo's scheme of concealment. From the viewpoint of Yutivo, this was unncessary considering that it had already complete control of the cash resources of Southern Motors and such transfer of profits could be effected by declaration of dividends approved by the Board of Directors, a body of men under Yutivo's control.

Apart from the accounting system, other facts corroborate or independently show that Southern Motors is a branch, department or alter ego of Yutivo. It is to be noted that even the branches of Southern Motors (in Bacolod, Iloilo, Cebu and Davao) treat Yutivo-Manila as their "Head Office" or "Home Office" as shown by their letters of remittances or other correspondences (Exhibits 42-A, 42-D, 42-G, 42-H, 42-I, 42-K, 42-K-2; 42-K-3, 42-K-4, 43, 48-A, 48-B, 48-C, 48-D, 48-E, 48-F, 48-G, 48-H, 52-A and 58-B). These correspondences were actually received by Yutivo and the reference to Yutivo as the head or home office is obvious from the fact that all cash collections of the Southern Motors' branches are remitted directly to Yutivo. Take Exhibits 52-A and 52-B for instance, the reference to Yutivo as the "Home Office" is clearly deduced from the fact that the attention of Mr. Yu Khe To, Treasurer (he is the Cashier) of Yutivo is called and he is not and never was an employee of Southern Motors from 1946 to 1949 (see Exhibit JJJJJ). Added to this fact is that Southern Motors may freely use forms or stationery of Yutivo. Thus, credit memoranda issued by Southern Motors were made with the use of Yutivo credit memoranda forms, the heading of which having been merely cancelled with the use of typewriter and superimposed with the typewritten name of "Southern Motors, Inc." (Exhibits 28 and 28-A to 28-U, inclusive). Correspondence of Southern Motors branches are received directly by Yutivo as though Southern Motors-Manila were but a part of Yutivo (see stamps on Exhibit I, J, K and L; also Exhibits 43-A-2, 43-A-4, 43-A-6).

It is not disputed that Yutivo and Southern Motors occupy the same offices in Manila - 404 Dasmariñas. In its dealings with the public or third persons, Yutivo treated Southern Motors as one of its departments. In fact, correspondences addressed to Southern Motors are received by Yutivo in behalf of Southern Motors in the same way as any correspondence addressed to and intended for Yutivo (Exhibits 3-A, 3-A-1, 3-B-1, 43-A-1, 43-A-3, 43-A-5, 47-1, 47-2).

The fact that Southern Motors was a mere department or adjunct of Yutivo is made more patent in connection with the arrastre charges paid for the "operation of receiving, conveying, and loading or unloading" of imported cars and trucks on piers and wharves (see Section 1260, Rv. Adm. Code; Webster's International Dictionary, Vol. I, p. 152). It is admitted that upon the withdrawal of General Motors from its operations within the Philippines, Yutivo became the importer of General Motors cars and trucks. If such be the case, all charges directly incurred in the importation of such cars and trucks should properly be treated as Yutivo's charges and expenses. However, in the instant case, we particularly note that while Yutivo paid for the arrastre charges which are incurred for the handling (receiving, unloading and delivery) of the imported cars and trucks from the incoming vessel for discharge at the Port of Manila, the charges were deemed as mere advances by Yutivo and treated or regarded as expenses of Southern Motors. Thus, arrastre charges covered by cash disbursement vouchers of Yutivo in various amounts (Exhibits 43-F, 43-H, 43-K, 47-D and 47-F) manifestly show that they were charged against the account of Southern Motors. In this connection, we have made a detailed examination of the books of accounts of Yutivo and Southern Motors and found that such was in fact the practice of Yutivo, From the Yutivo subsidiary book on the account of Southern Motors (Exhibits 55-A and 55-B) and the latter's Disbursement Book (Exhibit 53), we found that all arrastre charges for the years 1947, 1948, 1949, and 1950, which had been paid by Yutivo and which constituted as its expenses, had in fact been charged against Southern Motors (see pp. 1-2, 4-8, 10, 12 of Exhibit 55-B; pp. 4-17, 19, 21, 23-32, 34-37, 40-42, 44-46, 50-53, 55-56 and 59 of Exhibit 55-A; pp. (odd number pages only) 13-25, 41-61 of Exhibit 53). These arrastre charges incurred in the loading and unloading of imported cars and trucks for Yutivo and charged to Southern Motors reached a total of ₱115,987.11 detailed as follows:

1947 -	arrastre	- ₱ 2,262.93
1948 -	"	- 50,177.08
1949 -	"	- 49,317.83
1950 -	"	- 14,229.27

In addition, it should be noted that although overtime charges for the unloading of cars and trucks from vessels were requested by Yutivo and incurred as part of its acquisition costs thereof, such overtime charges have likewise been charged against and treated as expenses of Southern Motors as shown by the related cash disbursement vouchers and supporting invoice statements (see Exhibits 3-A, 3-B, 3-B-1). If Yutivo were the importer, these arrastre and overtime charges were Yutivo's expenses in importing goods and not Southern Motors'. Since these charges were made against Southern Motors, it plainly appears that Yutivo had sole authority to allocate its expenses even as against Southern Motors in the sense that the latter is a mere adjunct, branch or department of the former. It necessarily follows that any and all expenses of Southern Motors are likewise treated as expenses of Yutivo and the whole enterprise of selling of vehicles being a single entity or unit, it is immaterial as to which branch or department an expense is charged. A person can readily pay from any of his pocket because ultimately the reduction of his funds remains the same. An opposite view would be untenable and to our mind, Southern Motors was in fact treated as Yutivo's adjunct. The fact that the arrastre charges are not borne by Yutivo is also noticeable in the price calculation sheets (Exhibits 8-to 8-A t- 27, inclusive) of Yutivo wherein the acquisition cost of its imported vehicles which are billed to Southern Motors at a price equal to cost plus a mark-up of 12-1/2% is determined. We note that said price calculation sheets of Yutivo do not include as part of the cost the arrastre charges for the unloading and handling of the vehicles at the port of entry (Manila), neither do they include other usual or ordinary charges incurred in the importations thereof, such as delivery (To Yutivo's warehouse) and brokerage charges which form part of Yutivo's cost. In fact such charges are recorded as expenses of Southern Motors. If these charges are Southern Motors expenses then it is the importer. But since Yutivo is admittedly the importer, it would follow that the transfer of such charges to Southern Motors by Yutivo serves to corroborate the fact that Southern Motors is treated as a mere agency of the latter and it becomes unnecessary to distinguish whether such expenses are Yutivo's or Southern Motors'.

We proceed to another aspect of the relation of the parties -- as regards the management fees which petitioner contends as being paid by Southern Motors, as an entity separate from Yutivo, in consideration of the services rendered by Yutivo's officers for Southern Motors. The management fees due from Southern Motors to Yutivo for the years 1946 to 1950 were taken up as expenses of Southern Motors and credited to the account of Yutivo (pp. 4, 11, 13, 24, 46 and 59 of Journal, Exhibits 32, TTTT). If it were to be assumed that the two organizations are separate juridical entities, the corresponding receipts or receivables should therefore be treated as income on the part of Yutivo. However, such was not the treatment of the management fees received or receivable by Yutivo. For on the other hand, Yutivo's books (pp. 35, 46, 83, Exhibits HHHH and 57) manifestly show that the management fees for the years 1946, 1947, and 1948 in the amounts of ₱55,151.26, ₱81,306.54 and ₱112,952.21, respectively, were recorded as "Reserve for Bonus" and were therefore a liability reserve, not an income account. Yutivo did not declare these managament fees in its income tax returns for the said years (Exhibits MMMM, NNNN, OOOO) but did so only in 1949 (Exhibit VVV) when the investigation of this case was in progress. The "Resefve for Bonus" out of said management fees from Southern Motors for 1946, 1947 and 1948, and its sister organizations Sing Yee, Cuan and Yutivo, were subsequently distributed <u>directly to</u> and <u>credited in favor</u> of the <u>employees</u> and directors of Yutivo. The ultimate effects of these entries were that the management fees were paid directly to Yutivo officers and employees thereby implying that said officers and employees were also Southern Motors' officers and employees. In other words, there was no way of distinguishing a Yutivo officer or employee from a Southern Motors' officer or employee, for the latter corporation is but a mere department of the former and the legal fiction of separate entity between the two was but sham, unreal and untrue.

After a review of the above facts, we find that the Southern Motors was actually owned (or the majority of the stock thereof are owned) and controlled by Yutivo and the former was a mere subsidiary, branch, adjunct, conduit, instrumentality, alter ego or hechura of the latter. It is argued that the organization of Southern Motors as a separate corporation was made to separate the business of retailing cars and trucks from Yutivo's hardware business. However, as we have earlier stated, the same was unnecessary because Yutivo nevertheless financed principally, if not wholly, the business of Southern Motors and actually extended all the credit to the latter not only in the form of starting capital but also in the form of credits extended for the cars and vehicles allegedly sold by Yutivo to Southern Motors as well as advances or loans for the expenses of the latter when the capital had been exhausted. Thus the increases in the capital stock were made in advances or "guarantee" payments by Yutivo and credited in favor of Southern Motors. The funds of Southern Motors were all merged in the cash fund of Yutivo. At all times Yutivo, thru officers and directors common to it and Southern

Motors, exercised full control over the cash funds, policies, expenditures and obligations of the latter. Upon all the above facts, Southern Motors would aptly be called the conduit, instrumentality or alter ego of Yutivo . (Ballantine, Corporation 1946 Ed. p. 314; Anderson, Limitations of Corporate Entity, pp. 312-313; both citing cases). There was no legitimate or bona fide purpose in the organization of Southern Motors. The apparent objective of its organization was to evade the payment of taxes, to deprive the government of its lawful revenues. It is to be noted that the sales tax is collected and paid only once on the original sale by the importer or producer of an article. By first selling the cars and trucks to Southern Motors at a price lower than that offered to the public by Southern Motors, Yutivo, in effect, determined the sales tax on the basis of its sales to Southern Motors, not on the basis of sales made by Southern Motors to the public. Petitioner argues that it had the right to reduce its taxes. While we agree with petitioner that it may employ legal means to reduce its taxes, yet it cannot resort to means that would bring about the evasion of taxes.

As we have already intimated, arrastre charges constitute normal and ordinary charges of an importer because they are incurred by it in the unloading, handling or bringing of the merchandise into the Philippines. Charges of similar nature, such as overtime services in customs premises, brokerage charges, delivery charges from customs' custody to the importer's bodega, constitute necessary incidents to and form part of the cost of the vehicles imported by petitioner. In this particular case, the act of Yutivo in charging arrastre charges (and the other similar charges recited above) to Southern Motors and treating these charges as payable by Southern Motors in the concept of expenses, had, for accounting purposes, the effect of reducing the cost of such vehicles to Yutivo. By illegally transferring or channelling arrastre and other charges to Southern Motors, Yutivo had in fact been able to reduce the cost and selling price of its cars and trucks. The reduction in the cost of the vehicles reduced the mark-up added by Yutivo in the selling price to Southern Motors. This mark-up added was an arbitrary amount and the minimizing of the mark-up percentage further reduced the selling price. A combimation of all these practices resulted in the reduction of the basis of Yutivo's selling price, upon which price its sales tax liability is computed and assessed. Considering that the sales tax on automobiles varies according to the selling price thereof, the evasion of sales taxes by petitioner through the organization of Southern Motors strikes the mind as a novel and nefarious scheme to defraud the government of its lawful revenue.

We give below comparative figures which show how Yutivo evaded its sales tax liability even if we were to assume <u>arguendo</u> that Southern Motors is an entity separate from Yutivo. The computation is based on a sale of a car to Southern Motors by Yutivo at a price computed as folows (Exhibit 20-A, price calculation sheet used as example) -

	Yutivo Procedure	Computation assuming even Southern Motors is legal but without channelling
Price of car, c.i.f. Manila	$2,304.02	$2,304.02
Add - Bank charges etc.	92.41	92.41
	$2,396.43	$ 2,396.43
Converted to Pesos	₱4,894.71	₱4,894.71
Add - Arrastre and other charges channelled to Southern Motors, (amount arbitrary)	-.--	100.00
	₱4,894.71	₱4,994.71
Mark-up of Yutivo (20%)	978.94	998.94
	₱5,873.65	₱5,893.65
Sales Tax therein (10% on first 5,000 20% in excess)	674.73	678.73
Selling price to Southern Motors	₱6,548.38	₱6,571.38

From the above alone it will be noted that there is an evasion of sales tax by ₱4.00. If however, we disregard the sales to Southern Motors and compute the tax on the latter's selling price to the public or ₱7,450.00 (Exhibit 20), the sales tax would have been ₱1,035.00 with a deficiency of₱260.27 on the part of Yutivo.

It is apparent that evading taxes cannot in any language be said to be a lawful business purpose. It becomes manifest therefore that the establishment of Southern Motors was and is in fact for fraud. It was a mere device, contrived in order to take advantage of the legal fiction of corporate entity.

A corporation, being a juristic creation, must exist and operate only for lawful purposes or ends. It is a necessary corollary therefore that when a corporate device is employed to defeat public convenience, or to commit fraud or wrongful acts, or to effect illegal transactions, the law and jurisprudence recognize the need for protecting public interest by ignoring the veil of corporate fiction and look thru the corporate screen to the actual enterprise.

> "It is a general rule in Corporation Law, that a corporation once organized and registered has a separate and distinct juridical personality from the persons composing it and from any other corporation though capitalized and/or controlled by it. However, as a creature of law, the corporation must operate and exist for lawful purposes. Notwithstanding the long history of corporate entity, there are certain instances, as when the notion of legal entity is used to defeat public convenience, justify a wrong, protect fraud and defend a crime when, in the interest of justice, the law has 'pierced the veil of corporate fiction and looked beyond the corporate form to the actual enterprise' (J.J. McCaskell Co. vs. United States, 216 U.S. 504; United States v. Milwauke Refrigerator Transit Co., 142 Fed. 247, 255; American Factors (Phil.) Inc. v. Murphy Tire Corp. (C.A.-1952) 49 O.G. No. 1, p. 189, 194). Thus, where a corporation is a dummy, is unreal or a sham, and serves no business purpose and intended only as a blind, the corporate form may be ignored (Paymor vs. Commissioner (1945) 150 F 2d 334, 336, 337; Gregory v. Helvering (1935), 293 U.S. 465, 79 L. Ed. 596), for the law cannot countenance a form that is bald and a mischievous fiction. So too, a taxpayer may gain advantage of doing business thru a corporation if he pleases, but the revenue officers in proper cases, may disregard the separate corporate entity where it serves but as a shield

for tax evasion and trust the person who actually may take the benefits of the transaction as the person accordingly taxable (Higgins v. Smith, 1940), 306 U.S. 84 L. Ed. 406). Moreover, where a corporate entity is so organized and controlled, and its affairs are so conducted as to make it merely an instrumentality, agency, conduit, adjunct, hechura or alter ego of another, the legal fiction may be disregarded (Koppel (Phil.) Inc. v. Yatco, 1946, 77 Phil. 496). It has been held that when two factories appear as two separate businesses one as a corporation and the other as a single proprietorship -- when in reality they are but one, although as a corporation and, b y legal fiction it is an entity separate and apart from the other or from the persons composing it, the fiction of law which has been introduced as a matter of convenience and to subserve the ends of justice, cannot be invoked to further an end subversive of that purpose (La Compaña v. Kaisaha (1953) 49 O.G. No. 6, p. 2300); x x x" (Liddell & Co., Inc. vs. Collector of Internal Revenue, B.T.A. Case No. 186, in C.T.A. decision, August 11, 1955).

From the facts recited above, it is manifest that Yutivo organized, owns and controls Southern Motors. Yutivo contends that in organizing Southern Motors, it had only good aims to be accomplished. However, as we pointed out earlier, the acts subsequent to its organization and in the actual business functioning of the Southern Motors itself confirm the view that the copporation was in fact defrauding the government of its lawful revenues. "The intended or actual business functioning of the corporation itself, not the taxpayer's aim to be accomplished via the corporation is the test" (Jackson vs. Commissioner, CCA-2, No. 267, May 3, 1956, 1956 Ph Fed Tax Ser. par. 72648 56-1 USTC par 9506 aff'g 24 TC 1). Considering the attendant circumstances therefore, we find that Southern Motors was a blind or screen and served only to distort, conceal or hide the truth. It served mainly, if not solely, to escape taxation, contrary to a "business activity or purpose" for which a corporate device is justified (National Investors Corp. v. Hoey, 144 F 2d 466; Paymer v. Commissioner, 150 F 2d 334; see also Molina Properties v. Commissioner, 319 U.S. 436). Finding that Southern Motors was but a mere instrumentality, adjunct, subsidiary, branch, alter ego or hechura of Yutivo, the technical defense of separate corporate entity must be disregarded to arrive at the true tax liability of Yutivo.

> "As already stated above, under the evidence the sales in the Philippines of the railway materials, machinery and supplies imported here by Koppel Industrial Car and Equipment Company could have been as conveniently and efficiently transacted and handled -- if not more so -- had said corporation merely established a ~~established~~ a branch or agency in the Philippines and obtained license to do business locally; and if it had done so and said sales had been effected by such branch or agency, there seems to be no dispute that thel-1/2 per cent merchants' sales tax then in force would have been collectible. So far as we can discover, there would be only one, but very important, difference between the two schemes --a difference in tax liability amounting to the respectable sum of ₱64,122.51 in this case. To allow the taxpayer now to deny this tax liability on the ground that the sales were made through another and distinct corporation, as alleged broker, when we have seen that this latter corporation is virtually owned by the former, or that they are practically one and the same, is to sanction a circumvention of our tax laws, and permit a tax evasion of

> no mean proportions and the consequent commission of a grave injustice to the Government. Not only this; it would allow the taxpayer to do by indirection what the tax laws prohibited to be done directly (nonpayment of legitimate taxes), paraphrasing the United States Supreme Court in United States vs. Lehigh Valley R. Co., supra. (at 511)" (Koppel (Phil.), Inc. vs. Yatco (77 Phil. 496).

(The abstraction of the corporate entity will not be permitted to prevent and pervert the real and obvious truth. A corporate entity is not sacred as to be permitted to become an instrumentality of, or a cloak for fraud and since as in this case, Southern Motors was organized and did actually function to conceal the true revenues due the government, we do not hesitate to hold that the transactions or sales of cars between Yutivo and Southern Motors were but a blind and a mere sham. Such transactions were not bona fide and considering that the Southern Motors was owned and controlled by Yutivo, the transactions between the two were not at "arm's length". Hence, the determination of the sales tax on the basis of said transactions would be likewise unreal, both parties thereto being represented by common and not adverse, interests (see Campana vs. Harrison, 114 F 2d 400). In matters relating to revenues, it is the rule that the tax consequences of transactions depend upon and must be governed by substance rather than by form (Higgins vs. Smith, 308 U.S. 473; Weiss vs. Stearn, 265 U.S. 242). It is also a rule that, for tax purposes, tax liabilities cannot be determined by transforming a sale by one person into a sale by another by using the latter as a conduit through which title passes (Commissioner vs. Court Holding Co., 324 U.S. 331). It is self-evident and we do not hesitate to so hold that the bona fide sales upon which the sales tax liability of Yutivo must be determined are those of Yutivo's adjunct, instrumentality or alter ego (Southern Motors) which were the first or original sales bona fide (see Koppel (Phil.) Inc. vs. Yatco, supra).

Proceeding to the next issue, petitioner however contends that even assuming that the sales by Southern Motors to the public are to be treated as the taxable transactions, nevertheless the sales tax should be based on the gross selling price thereof after deducting the amount intended to cover the sales tax previously declared in Yutivo's sales invoices to Southern Motors. It is argued that Yutivo in making a sales to Southern Motors did actually segregate the components of the gross selling price in the invoice into the selling price proper and the tax thereon. Hence, petitioner contends that it had in fact complied with General Circular No. 431 issued by respondent to implement the collection of taxes under provisions of Sections 183, 184, 185 and 186 of the National Internal Revenue Code. Petitioner further argues that its acts regarding the sales tax were on its theory that Yutivo and Southern Motors were separate entities and that on this view it was not necessary then to segregate the taxes in the sale invoices of Southern Motors to the public. However since the Court disregarded the separate juridical personality of Southern Motors from Yutivo and considered only one for both, the latter should at least be deemed to have complied with said general circular. This Court, in an earlier case had occasion to pass upon a similar question in the case of Liddell & Co. vs. Collector (B.T.A. Case No. 186, decided August 31, 1955). In that case, however, I specifically dissented from the majority opinion of the Court penned by my colleague, Judge Luciano, in the sense that in justice to the taxpayer therein, I opined that the tax deficiendy should be computed upon the selling price after deducting therefrom the sales tax already paid to Liddell Motors, the <u>alter ego</u> of Liddell and Company, and I quote:

> "However, I am constrained to dissent from that portion of the said opinion which sustains the theory of respondent Collector of Internal Revenue regarding the amount to be paid. According to the computation of the respondent, the deficiency tax should be computed on the gross selling price of each car or truck made by Liddell Motors, Inc. deducting of course therefrom the tax already paid by Liddell & Company, Inc. This way of computing the deficiency tax is unfair, because the selling price of Liddell Motors, Inc. upon which the computation of the tax is based, includes the tax already paid by Liddell & Company, Inc. practically imposing a tax already paid. Besides the adoption of this procedure would in certain cases, elevate the bracket under which the tax is based. The late payment is already penalized, through the imposition of surcharges; by adopting the theory of the Collector, we will be creating an additional penalty not contemplated by law. It is therefore my opinion, that petitioner is liable to pay only the tax determined upon the selling price obtained by Liddell Motors,

Inc. after deducting the tax already paid by Liddell & Company, Inc. x x x x x." (Liddell & Co. vs. Collector, supra Con. and Dis. Op.)

In relation to this case, I see no reason for modifying my afore-quoted view. I might even add in support thereof, that in the instant case Yutivo should be deemed or be given the benefit of having complied substantially with the provisions of said General Circular No. 431. Hence, petitioner's liability for sales tax should be only ₱820,549.91, exclusive of the surcharges hereinafter to be discussed.

On the other hand, my colleague, Judge Luciano, votes to apply the majority opinion in the Liddell case to the case at bar, wherein it was held that:

"It is to be observed that the percentage sales taxes imposed by the aforesaid sections 164, 185 and 186 are based upon the 'gross selling price or gross value in money of the articles so sold.' This 'gross selling price' upon which the tax is based refers to the gross prices paid for the products or articles named when purchased (Pure Oil Co. State of Alabama (1943) 12 SO 2d 861, 148 ALR 260) or the total amount received by the seller from the purchaser or consumer (Vause & Striegel v. Mckibbin (1942) 379 Ill. 169, 39 NE 2d 1006; Winter v. Barrett (1933) 352 Ill. 441, 186 N.E. 113, 89 ALR 1398). In other words, the 'gross selling price' or 'gross value in money' of the articles sold, bartered, exchanged, or transferred, as used in the aforecited sections of the Tax Code, is the total amount of the money or its equivalent which the purchaser pays to the vendor to receive or get the goods. It is obvious that this gross selling price must include not only the cost of the article itself and expenses or charges which are added to it, but also the seller's expected margin or profit as well as the taxes it is required to pay. Although, the sales tax may appear to be part of the price, it is nevertheless proper to determine the percentage sales tax in the entire sum paid for the goods sold and received by the seller,

> Liddell & Company, Inc. thru its agent or *alter ego* Liddell Motors, Inc., and not to deduct the amount of the tax from the sales price on which the tax was paid. (Lash's products Company vs. United States (1929) 278 U.S. 175, 73 L. Ed. 251; Vause & Striegel v. McKibbin, *supra*).

x x x x

> "As presented to this Court, the petitioner in 'selling' to Liddell Motors, Inc. bills the sales tax as a separate item. This sale has however been discarded, and as explained earlier, the original sales upon which the sales tax should bedetermined, are those of Liddell Motors, Inc. to their customers. It is observed that when Liddell & Company, Inc. sold their cars and trucks to the public through its agent or instrumentality Liddel Motors, Inc. the billing of the price in the invoices was made without billing the sales tax under a separate item. Without deciding here as to the correctness of the procedure laid out in the aforecited General Circular No. 431 -- the fact that the billing by Liddell Motors, Inc. did not provide for the tax as a separate item as required therein -- we find and hold that the petitioner cannot invoke the applicability of the said circular to the computation of the tax.

x x x x

> "The petitioner had elected to close its retail department at the end of 1948 and to conduct its retail business in 1949 and 1950 thru a purportedly separate entity Liddell Motors, Inc. which appears to have been organized as a subterfuge to evade the proper computation of the sales tax, although it was in fact operated as an adjunct, instrumentality or *alter ego* of the petitoner. The petitioner should therefore be responsible for the consequences of its act."

It is apparent that since there is only one vote--my vote -- in this case for the modification of the compu- vote-- in this case for the modification of the computation of the sales tax determined by the respondent and in view of the absence of the necessary vote of two judges to reverse or modify the decision of respondent in relation to the computation of such tax, we take it that the prevailing opinion and vote would be that of my colleague, Judge Luciano, who votes for the affirmance of the computation. Hence, for lack of the necessary two votes to alter or modify the decision of respondent Collector where the sales tax liability of petitioner was computed on the basis of the gross selling price of cars and trucks sold by Southern Motors to the public, without giving allowance for the reduction of the tax already paid, the same is deemed affirmed.

In relation to the penultimate issue, petitioner contends that is should not have been held liable for the surcharge of 50% imposed under Section 183 of the Tax Code on the ground that no fraud was involved in this case. As we have stated earlier, petitioner had chosen to create Southern Motors as a separate corporation purportedly to deal in vehicles, but we found that the same was organized to become a subterfuge or instrumentality for the purpose of evading or escaping the payment of the correct amount of sales tax which is lawfully due the government. This was achieved by channelling part of the cost charges of Yutivo's imported cars to Southern Motors and by treating the same as a cost of retailing, thereby reducing, for tax purposes, the selling price of said cars very much lower than it would have otherwise been. Petitioner should be responsible for the consequences of its acts of wilfully evading the taxes and considering all the circumstances, the same warrant the imposition of the fraud penalty of 50% pursuant to Section 183 (a) of the Tax Code. It becomes unnecessary for us to discuss the imposition of the 25% surcharge for late payment of the tax, petitioner having raised no issue in relation thereto. Moreover, it should be stated that the imposition of such surcharge for late payment of the tax is mandatory and imposed as a matter of course.

The ultimate issue raised and presented as a defense by petitioner is to the effect that it is no longer liable for the sales tax, the same having been barred by reason of prescription. The facts recited above show that on November 7, 1950 respondent assessed the sales tax deficiency of petitioner for the third quarter 1947 to the fourth quarter 1949, inclusive (Exhibits 7 and 8). The corresponding returns filed by petitioner covering the aforesaid period were filed at the earliest on October 1, 1947 as regards the third quarter 1947. Pursuant to Section 331 of the Tax Code; under ordinary circumstances, the Collector of Internal Revenue may assess the tax within five (5) years from the filing of the return. Inasmuch as the assessment in relation to the taxable years of 1947, 1948 and 1949 had been done on November 7, 1950, the same was obviously made within the five-year period prescribed by said Section 331. The fact that the assessment was subsequently reiterated in the decision of respondent made on December 16, 1954, did not in any way alter the fact that the assessment was made reasonably. The said decision of respondent not only reiterated the assessment for the years 1947 to 1949 inclusive, but likewise contained an assessment for sales tax deficiency of petitioner covering the year 1950. It is also evident that the sales tax deficiency assessment for the year 1950 was made well within the five-year period as prescribed by Section 331 of the Tax Code. Moreover, in this particular case, there is a finding that petitioner committed fraud in the declaration and payment of its sales tax liability and that it acted fraudulently to escape or evade the payment of taxes. The prescriptive period in this case would therefore be found in Section 332 (a) of the National Internal Revenue Code, and we quote:

> "SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes. - (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, 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 falsity, fraud, or omission."

Even assuming *arguendo* that the five-year period provided by Section 331 of the Tax Code is no longer available, the assessment in question was plainly made within the ten-year period prescribed by Section 332 (a) cited above. We therefore hold that the assessments which are the subject matter of review in this particular case have all been made within the reglamentary period prescribed by the Tax Code.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered dismissing the herein petition for review and petitioner is hereby ordered to pay to respondent the sum of ₱1,266,176.73 as sales tax deficiency for the third quarter 1947 to the fourth quarter 1950, inclusive, plus 75% surcharge thereon or ₱949,632.54 or a sum total of ₱2,215,809.27, with costs against petitioner.

SO ORDERED.

Cebu City, for Manila, April 27, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.