REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILIPPINE
MANUFACTURING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 1710

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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10/30/70

DECISION

This is an appeal from the decision of respondent holding petitioner liable for deficiency sales tax and surcharge in the sum of ₱124,664.60 for the period from 1951 to the first quarter of 1956, computed as follows:

2% tax paid and included as part of deductible materials (represented at 107%) ------	₱1,524,470.11
7% tax due (₱1,524,470.11 ÷ 107% x 7%) ---------------	₱ 99,731.68
25% surcharge ---------------	24,932.92
Total amount due -------------	₱ 124,664.60

Petitioner is a manufacturer of lard, soap and margarine, the principal ingredient in the manufacture of which is coconut oil, which is also manufactured by it. The sales tax on sales of lard, soap and margarine was paid by petitioner pursuant to Section 186 of the National Internal Revenue Code. The tax of 2% on the market value of coconut oil provided in Section 189 was also paid by petitioner. In computing the sales tax on lard, soap and margarine, petitioner deducted from the gross selling price not only the market value of the coconut oil used in the manufacture of said articles but also the tax of 2% which it had previously paid on said oil under Section 189 of the Revenue Code. Respondent contends that it was error for petitioner to deduct from the gross selling price of lard, soap and margarine the amount corresponding to the tax of 2% on the coconut oil paid under Section 189, hence, the deficiency assessment.

Section 189 of the Revenue Code imposes a percentage tax on sales by the manufacturer of lard, soap and margarine at the rate of 7% of the gross selling price of such articles. From the gross selling price, Section 186 allows deduction of the "total cost" of the raw materials used in the manufacture of said articles where such raw materials are "subject to tax under this section and section one hundred and eighty-nine." For convenience, the proviso contained in Section 186 which allows deduction of the "total cost" of the raw materials used in the manufacture of articles taxable under that section is quoted below:

> "x x x Provided, That where the articles subject to tax under this section are manufactured out of the materials

> likewise subject to tax under this section and section one hundred and eighty-nine, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles."

The sole issue presented for our consideration is whether or not the term "total cost" of the coconut oil used in the manufacture of lard, soap and margarine includes the tax on such coconut oil paid by petitioner under Section 189.

It is contended on behalf of petitioner that the total cost of coconut oil used by it in the manufacture of lard, soap and margarine should include the tax it paid because if said oil was purchased by another who uses the oil in the manufacture of the same articles, the said tax would form part of the cost of oil which is deductible from the gross selling price of the manufactured articles. To quote from the memorandum of counsel for petitioner:

> It is not disputed that the oil used by petitioner in the manufacture of lard, soap and margarine was milled or manufactured by itself in its own oil mill or factory and that upon removal of said oil from petitioner's oil mill or factory for use as raw material in its manufacture of lard, soap and margarine, petitioner paid the 2% miller's tax based on the actual market value of the oil at the time said oil leaves its oil mill or factory. (Exhibit B)
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> It is not also disputed that what

> petitioner deducted from the gross selling price of the manufactured lard, soap and margarine during the period in question for the purpose of computing the 7% sales tax on said products was the total cost of the oil used as raw materials of lard, soap and margarine consisting of the market value of oil as quoted by the Bureau of Commerce at the time of its withdrawal from petitioner's oil mill or factory and the 2% miller's tax on said oil withdrawn. (Exhibit B)
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> We submit that the 2% miller's tax paid by petitioner on the oil it processed constitutes a legitimate part of the "total cost" of said oil when account is taken of the fact that, had the petitioner purchased the said oil from another company, the 2% miller's tax would have formed part of the said "total cost", as the vendor would naturally have passed on to petitioner the 2% miller's tax. (pp. 57-58, C.T.A. rec.)

The above line of reasoning loses sight of the fact that the cost of an article to a purchaser is different from that of the manufacturer. To our mind, the cost of an article to a manufacturer is the total amount incurred or spent in the manufacture of such article; while the cost of the same article to a purchaser is the total amount paid by him to acquire the same. This does not place the manufacturer at any disadvantage as against a purchaser, as alleged by petitioner, because a manufacturer does not sell articles manufactured by it at cost. A manufacturer ordinarily sells articles at cost plus expenses and profit. Therefore, the supposed disadvantage to a manufacturer in not being allowed to claim deduction for the tax paid on the raw material is more than compensated by the sale at a profit of such raw materials.

There is another point worthy of consideration which we believe militates strongly against the position taken by petitioner. The 2% tax on coconut oil paid by it is deductible from its gross income for purposes of the income tax. (See Sec. 30/c7, Rev. Code.) To permit it to claim deduction for the same amount from the gross selling price of lard, soap and margarine manufactured by it for purposes of the sales tax would give it a double advantage. This to our mind has never been the intention of the law.

It is to be noted that the law allows deduction of the "total cost" of coconut oil from the gross selling price of lard, soap and margarine manufactured by petitioner. What was deducted by petitioner was not the "total cost" but "the market value of oil as quoted by the Bureau of Commerce at the time of its withdrawal from petitioner's oil mill or factory and the 2% miller's tax on said oil withdrawn."[1] The market value of an article is ordinarily not the equivalent of its cost. Generally, a manufacturer sells its manufactured articles at market value, which covers not only the cost of manufacture but also the expected profit, except under abnormal conditions when a manufacturer is com-

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[1]See pages 5-6, Memorandum of counsel for petitioner, Oct. 21, 1969.

pelled to sell at cost or below cost. Nothing appears of record to indicate that in this case the market value of coconut oil was only the cost of manufacturing the same. It is for this reason that on July 31, 1970, this Court issued an order, which we quote:

> Petitioner has appealed from the decision of respondent Commissioner of Internal Revenue holding it liable for the sum of ₱124,644.60, representing alleged deficiency sales tax on its sales of lard, soap and margarine from 1951 to the first quarter of 1956. The deficiency assessment was brought about by the inclusion of the tax of 2% which was paid on the coconut oil manufactured by petitioner pursuant to Section 189 of the National Internal Revenue Code, which coconut oil was used in the manufacture of lard, soap and margarine.
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> Under Section 186 of the National Internal Revenue Code, original sales of lard, soap and margarine by the manufacturer are subject to the tax of 7% of the gross selling price, less the "total cost" of the raw materials taxable under Section 189 of said Code and used in the manufacture of such articles.
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> While evidence has been adduced in regard to the market value of the coconut oil used in the manufacture of lard, soap and margarine during the period in question, there is nothing of record as to the actual cost of production of said coconut oil.
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> WHEREFORE, in the interest of justice, let this case be reset for hearing on September 14, 1970 at 9:00 a.m. to enable the parties to present evidence as to the actual cost of production of the coconut oil used by petitioner in the manufacture of lard, soap and margarine and sold from 1951 to the first quarter of 1956. (pp. 90-91, CTA Rec.)

However, both parties failed to submit evidence as to the actual cost of production of the coconut oil used by petitioner in the manufacture of lard, soap and margarine during the period in question. They asked that the case be considered submitted on the basis of the pleadings and the evidence already submitted. Accordingly, we are constrained to hold that, in the instant case, the total cost of the coconut oil in question which is deductible from the gross selling price of lard, soap and margarine manufactured by petitioner is the market value thereof, as agreed to by both parties, without including the 2% tax on the coconut oil.

For the foregoing considerations, the decision appealed from is hereby confirmed, with costs against petitioner.

SO ORDERED.

Quezon City, October 30, 1970.

(Sgd.) ROMAN M. UMALI
Presiding Judge

I CONCUR:

(Sgd.) RAMON L. AVANCEÑA
Associate Judge

Associate Judge Estanislao R. Alvarez did not take part.