Library

Oct. 28, 1959

INTER-PORT COMMERCIAL COMPANY,
Petitioner,

- versus -

C.T.A.
CASE NO. 419

October 28

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

The petitioner herein, Inter-Port Commercial Company, seeks by this appeal to reverse a decision (Exhibit "J", p. 91 BIR rec.) of the respondent Commissioner of Internal Revenue denying its claim for refund of the total amount of ₱6,647.45 which the respondent had assessed and required it to pay in different amounts and on four different occasions during the year 1956, supposedly under authority of Section 191 of the National Internal Revenue Code which imposes a percentage tax of 3% on the gross receipts of printers and other sundry occupations.

The pertinent facts are not controverted. For brevity, we shall give the gist of these facts as appearing in the "Stipulation of Facts" (pp. 25-30, CTA rec.) of the parties and the additional evidence presented during the trial of the case.

The petitioner herein, Inter-Port Commercial Company, is a domestic corporation which was organized, according to the purpose clause of its Articles of Incorporation, Exhibit "A" (pp. 51-57, BIR rec.) for the purpose of engaging in multifaricus business activities among them that of the printer, stationer, litographer, engraver, diesinker, publisher, paper manufacturer, importer, exporter and independent contractor. However, from the nature and kind of machineries used in petitioner's manufacturing plant (pp. 32-42, CTA rec.) and the compensation which it received from Menzi & Co., Inc., from April 1, 1956 to October 31, 1956, inclusive, amounting to ₱221,581.66 which is now under review, the petitioner derives its main income and is engaged primarily, if not solely, in the business of converting blank paper in roll and cardboard supplied to it by Menzi & Co., Inc. into paper bags, envelopes, notebooks and paper pads which the latter company then sells to the public. In compliance with the written contract, Exhibit "8" (pp. 13-15, BIR rec.) between the two companies which was executed on May 12, 1950, barely four months after the incorporation of petitioner corporation, the latter among other things also does limited printing job on the articles which it manufactures for its employer in order to make them more marketable and for the purpose of identifying the manufacturer and trademark of such articles. Some of the envelopes and paper bags, Exhibits "C-6" to "C-15", manufactured by the petitioner for its employer are impressed with the trade name "Menzi & Co., Inc.". For the convenience of school children and school teachers, the notebooks and paper pads, Exhibits "E" to "E-4" and "F" to "F-4", are provided with lines and on their cover are impressed the words "Bureau of Education", "Knowledge is Power", "Señorita (Registered Trade Mark) Note Book", "Name, Age, Grade, Room, School, Town, Province, Teacher", "Manufactured in the Philippines by Menzi & Co., Inc., 1087 Soler Street, Manila", "Señorita (Registered Trade Mark) Grade Pad" and "Señorita (Registered Trade Mark) Intermediate Pad".

The petitioner maintains and operates for this incidental printing job, one (1) cylinder press machine (p. 33, CTA rec.) in its manufacturing plant, out of a total of twelve (12) machines (pp. 32-42, CTA rec.), the eleven (11) others being used for paper cutting, paper ruling, sewing, stripping, cornering, spiral punching and envelope blank cutting.

During the period from April 1, 1956 to October 31, 1956, inclusive, now under review, the petitioner received from Menzi & Co., Inc., as compensation for the prestation, the total amount of ₱221,581.66, itemized as follows:

1956	Paper Bags	Envelopes	Note Books & Paper Pads
April	₱ 7,440.71	₱1,066.85	₱55,125.65
May	2,255.76	770.35	56,908.25
June	4,278.21	1,034.80	32,045.82
July	4,499.37	1,066.85	17,255.54
August	8,208.50	1,068.20	6,776.19

September	₱7,040.06	₱ 800.45	₱ 3,072.05
October	5,498.95	585.45	4,783.65

(Par. 8, STIFACTS, pp. 26-27, CTA rec.)

The respondent, upon the insistence of one of its agents and contrary to his previous rulings on the matter (Pars. 9 & 10, STIFACTS, pp. 27-29, CTA rec.), assessed against and required the petitioner to pay to the Government the total sum of ₱6,647.45 as three percent (3%) printer's tax on the gross compensation mentioned above in the amount of ₱221,581.66. The respective dates of payment and the amounts actually paid, as appearing in the official receipts, Exhibits "H", "H-1", "H-2" and "H-3" (pp. 43-45, CTA rec.) are as follows:

Period Covered	Date Paid	Amount
2nd Quarter, 1956	7-20-56	₱4,827.79
July & August, 1956	9- 7-56	1,166.24
September, 1956	10- 5-56	327.38
October, 1956	11- 8-56	326.04
	TOTAL	₱6,647.45

(Par. 11, STIFACTS, p. 29, CTA rec.)

The petitioner, through counsel, in a letter, Exhibit "I" (pp. 77-78, BIR rec.) dated December 6, 1956, and received by the respondent on December 14, 1956, questioned the validity of the assessment invoking the previous contrary ruling (BIR Ruling No. 105.02, October 24, 1955) of the respondent on the matter and also requested for the refund of the total sum of ₱6,647.45, which it was required to pay as percentage tax during the year 1956.

The respondent, however, denied petitioner's claim for refund in a letter, Exhibit "J" (p. 91, BIR rec.) dated September 11, 1957, which was received by the petitioner on September 23, 1957, alleging among other things that the BIR ruling being invoked by petitioner has already been superseded by another ruling contained in the 5th Indorsement of the Secretary of Finance to the Collector of Internal Revenue, dated February 26, 1956, and that the petitioner is liable as a "printer" to the fixed and percentage taxes provided in Sections 182 and 191 of the National Internal Revenue Code. Not satisfied with the last mentioned ruling and denial of its claim for refund, the petitioner on September 28, 1957, interposed the present appeal within the period prescribed by law.

The only issue to be decided in this appeal is whether or not the petitioner could be considered a "printer" as the word is used in Section 191 of the National Internal Revenue Code and therefore, subject to the three percent (3%) printer's tax on its gross receipts under the aforecited section of the Tax Code.

The petitioner does not deny that it does a limited printing job for Menzi & Co., Inc. in the process of converting the paper in roll and cardboard of the latter into paper pads, notebooks, envelopes and paper bags. As a matter of fact, the petitioner candidly admits that for this purpose it maintains and operates one (1) cylinder press machine in its manufacturing plant located at 1076 Soler St., Manila. However, the petitioner maintains

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that the printing job that it does for Menzi & Co., Inc. is but an incident of its main contract with said company which is to convert the materials of the latter into paper bags, envelopes, notebooks and paper pads. The petitioner claims, and the respondent has not disproved this fact, that the limited printing job that it does in its manufacturing plant is exclusively for Menzi & Co., Inc. and that it has never offered nor accepted printing jobs from outsiders in the capacity of a printer. As a matter of fact, it is expressly stipulated in the contract, Exhibit "B" (pp. 13-15, BIR rec.) between the two corporations that the petitioner cannot perform <u>any</u> work for <u>any</u> person or entity other than Menzi & Co., Inc. unless the amount due each year from the latter to the petitioner for work performed shall be below ONE HUNDRED THOUSAND PESOS (₱100,000.00). Even the trade-name of the petitioner - "Inter-Port Commercial Co." does not give the slightest hint that it is engaged in printing as its main line of business unlike the regular printing establishments that usually add to their firm name the descriptive suffixes "Printing Press"; "Press" or "Lithographer". The petitioner further avers that for the last twenty (20) years, the respondent has consistently ruled in cases of similar nature, that the contractor who makes paper bags, envelopes, notebooks and paper pads for another who supplies the materials, even though printing is done in the process, is not subject to the printer's tax, and for that matter any national internal revenue business or occupation tax, but that it is the owner of the finished product who is liable for the payment of sales tax on its sales thereof to the public. (BIR Rulings of December 2, 1940; January 17, 1947; July 2, 1951; and, October 24, 1955.) The petitioner contends that the previous rulings of the respondent on the matter adhered to for almost two decades, and not the present one, are far more reasonable and in consonance with the law and therefore the decision now under review should be reversed and set aside.

Contrary to his previous rulings on the matter, the respondent now tries to stretch the length and breath of his collecting arm by interpreting the word "printer" as the word is employed in Section 191 of the National Internal Revenue Code in its strictest literal sense. He avers that the petitioner admits that it does printing work for Menzi & Co., Inc.; that the petitioner also admits that it owns and operates one (1) cylinder press machine; and, that its Articles of Incorporation permit it to engage in the printing business. Ergo, it must be a "printer" within the meaning and scope of the word as employed in Section 191 of the National Internal Revenue Code, and therefore, liable for the payment of the percentage tax provided therein.

We believe that the interpretation, scope and meaning given by the respondent in the present case of the word "printer" as employed in Section 191 of the National Internal Revenue Code is much too literal and unreasonable.

According to Webster's New International Dictionary, Second Edition (Unabridged), "A printer is one who works at the business of printing books, newspapers, engravings, etc.". In the case of petitioner, printing is clearly not its business; it has never offered its services to Menzi & Co., Inc. nor to the public as a printer; and, the great portion of the work that it had done and still doing for said company is not printing.

A person's main occupation or business is determined by many factors among them (a) the firm name used; (b) the kind and the extent of the service or services that it has offered and has actually rendered to its customers; and, (c) the source or sources of the main bulk of his yearly income. Take the case of the shoemaker or hotel keeper which are among the occupations or business activities specifically mentioned in Section 191 of the National Internal Revenue Code subject to percentage tax. Let us suppose that the shoemaker, in order to reduce his cost of production and because of import restrictions, manufactures his own shoe boxes and also maintains and operates a small printing press with which to label the trade-mark, color, style and sizes of his finished products. Obviously, if one must decide the main occupation or business of said person for the purpose of applying Section 191 of the National Internal Revenue Code, it would be a mistake to classify him under the category of a "shoe box manufacturer" or a "printer".

To cite another example, it would be a mistake to classify a "hotel keeper" as a "printer" or as a "baker" simply because he maintains and operates a small printing machine with which to print his daily menus and a small bakery shop from which he makes bread for his hotel guests. Conversely, a person may be engaged in the main business of printing with one or two incidental activities on the side in connection with said business, such as for example the operation and maintenance of a restaurant for the exclusive use of its officials and employees and a mechanical shop for the repair of its printing machines and office vehicles. For the purpose of occupational classification, the person is a printer and not an operator of a mechanical or repair shop or a restaurateur. "Where a person or corporation is engaged in a distinct business and, as a feature thereof, in an activity merely incidental which serves no other person or business, the incidental and restricted activity is not to be considered as intended to be separately or additionally taxed." (Craig vs. Ballard & Ballard Co. 196 So. 938 cited with approval in Standard-Vacuum Oil Co. vs. Municipal Treasurer of Opon and the Municipality of Opon, G. R. No. L-6931, April 30, 1955; see also Manila Lighter Transportation, Inc. vs. The Municipal Board of the City of Cavite et. als., G. R. No. L-6848, April 27, 1956, 52 O.G. 3072.)

The respondent gives as additional ground for his present ruling the fact that under its charter, the petitioner is permitted to engage in the printing business and since it actually did printing work for Menzi & Co., Inc. in 1956, no matter how limited and exclusive, it is therefore a printer within the contemplation of Section 191 of the National Internal Revenue Code. On this score, the respondent is in error. As pointed out by petitioner's counsel, "It is not so much what the charter says as what the corporation actually does that control" (51 Am. Jur., Sec. 599; see also Jesus Sacred Heart College vs. Collector, G. R. No. L-6807, May 24, 1954; Collector vs. V. G. Cinco Educational Corporation, 53 O. G. 2470; University of the Visayas vs. Collector, Cebu Civil Case No. R-3434, January 22, 1958).

(We believe and so hold, based on the above criteria, that the respondent was in error when he classified the petitioner herein and made it to fall under the category of a "printer" for the purpose of exacting from it as such the percentage tax provided in Section 191 of the National Internal Revenue Code. The petitioner herein rightly and correctly falls under the category of an "independent contractor" (Article 1713, Civil Code of the Philippines; Fressel vs. Mariano Uy Chaco Sons & Co. 34 Phil. 122) and not as a "printer" judging from the terms and conditions of its contract, Exhibit "B" (pp. 13-15, BIR rec.) with Menzi & Co., Inc.; from the nature and kind of machineries used in its manufacturing plant; from the nature and kind of prestation rendered; and, the compensation received for such prestation.)

Apparently, the all-embracing and literal meaning given by the respondent to the word "printer" in the present case was brought about because he found his hands tied before the approval of Republic Act No. 1612, which took effect on August 24, 1956, adding "other independent contractors" in the list of occupations or business activities subject to percentage tax under Section 191 of the National Internal Revenue Code. The respondent must have thought that without stretching to the full the meaning of the word "printer", wrong and far-fetched though it may be, there would be no way of getting his share of 3% on the gross receipts of petitioner because the nature of the prestation done by it for Menzi & Co., Inc. is clearly that of an "independent contractor". To this we say, that a patent deficiency in the law cannot and should not be cured thru an incorrect and far-fetched administrative interpretation of such law. The remedy is for Congress to correct such deficiency as in fact it did when it approved Republic Act No. 1612 on August 24, 1956.

Congress itself admits said deficiency as shown in the explanatory note to House Bill No. 5809 (now Republic Act No. 1612).

> "The proposed bill seeks to amend Title V of the National Internal Revenue Code pertaining to privilege taxes on business and occupation. The features of the proposed amendments are as follows:
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> "x x x x
>
> "11. Broadening the scope of the provisions of Sections 191 by including therein other activities of the nature which are essentially sales of services and which are heretofore enjoying exemption from tax in view of the deficiencies of the law. Gen-

> erally. Section 191 is amended to include all independent contractors. These are lucrative and income-producing activities and the additional revenue resulting from their being subjected to tax cannot be underestimated." (Congressional Record, Vol. III, pp. 2946-2947, May 17, 1956; underscoring supplied.)

The case of the petitioner has ceased to be controversial and is now settled with the approval of Republic Act No. 1612 on August 24, 1956. From the date of the approval of said Act, the petitioner is liable for the payment of a fixed percentage tax of 3% on its gross receipts under Section 191 of the National Internal Revenue Code, not as a printer but as an independent contractor.

Of the total amount of ₱6,647.45 sought to be refunded which the petitioner had paid during the period from July 20, 1956 to November 8, 1956, inclusive, it is entitled to the refund of the amounts of ₱4,827.79 and ₱1,166.24 or a total of ₱5,994.03 which were paid on July 20, 1956 and September 7, 1956, respectively (Exhibit "H" and "H-1", p. 43, CTA rec.), but not the amounts of ₱327.38 and ₱326.04 or a total of ₱653.42 (Exhibits "H-2" and "H-3", pp. 44-45, CTA rec.) which were paid on October 5, 1956 and November 8, 1956, respectively, after the approval of Republic Act No. 1612 on August 24, 1956. The respondent may retain and consider these last two-amounts as payment by the petitioner of its percentage tax corresponding to said periods as an "independent contractor" and not as a "printer".

WHEREFORE, the decision appealed from is modified, and the respondent Commissioner of Internal Revenue is hereby ordered to refund to the petitioner Inter-Port Commercial Company the amount of Five Thousand Nine Hundred and Ninety Four Pesos and Three Centavos (₱5,994.03), without pronouncement as to costs.

SO ORDERED.

Manila, October 28, 1959.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge