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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

December 28, 1964

PHILIPPINE PLASTICS
INVESTMENT CO., INC.,
Petitioner-Appellant,

- versus -

C.T.A. CASE NO. 1266

ACTING COMMISSIONER
OF INTERNAL REVENUE,
Respondent.

X - - - - - - - - - - - - - X

D E C I S I O N

On August 20, 1962, the respondent assessed against the petitioner the sum of P93,786.65 as commercial broker's percentage tax for the period from 1957 to 1961, which amount includes the delinquency surcharge of 25% and the 50% fraud penalty. One week thereafter, or on August 27, 1962, another assessment was made against petitioner in the sum of P84,253.29 for the same tax and surcharges covering the period from 1954 to 1956. Petitioner, through its counsel, sought a reinvestigation of the case to enable it to present evidence. At the same time, it requested that collection of the amounts assessed be deferred for which it offered to file the necessary bond. As no reply was received from respondent, and having been informed that collection of the aforesaid amounts would be enforced by distraint and levy, petitioner filed its petition for review with this Court on August 28, 1962 with motion for the issuance of an order "suspending the collection of the said tax and enjoining respondent and his representatives from enforcing the same."

After hearing, this Court granted the motion for the issuance of an order suspending the collection of the tax

upon the filing and approval of a surety bond for ₱1,300,000.00 to secure payment of the sums of ₱908,736.65 and ₱384,253.29 covered by the two assessments. (See Resolution of Aug. 31, 1962; motion for reconsideration denied by Resolution dated Nov. 11, 1962.) Upon the filing and approval of the surety bond for ₱1,300,000.00, an order was issued on August 31, 1962 enjoining the respondent from enforcing collection of the tax in question pending final decision on the appeal.

Before the case could be heard on the merits, another assessment was made against petitioner for the sum of ₱271,098.24, representing commercial broker's percentage tax and penalties for the years 1951 to 1953. For this reason, petitioner filed an amended petition for review to include this last assessment and for which another surety bond for ₱280,000.00 was filed to secure its payment pending final determination of the case.

After trial, the case was submitted for decision by the parties solely on the issue whether or not petitioner, during the period from 1951 to 1961, was a commercial broker in its relation with the Binalbagan-Isabela Sugar Company, Inc. (hereinafter referred to as BISCOM) from which it received compensation for its services as alleged "Manager" of the business affairs of said company.

The evidence shows that petitioner entered into a contract of management with BISCOM under which petitioner, as manager, was entrusted with the general management and conduct of the business affairs of BISCOM. In consideration of the services of petitioner, BISCOM undertook to pay a compensation of 5% (later 10%) of all its "gross income, sales, expenses, purchases and other receipts and disbursements." The circumstances

leading to the appointment of petitioner as manager of BISCOM and the reasons therefor are stated in the memorandum of counsel for petitioner and, not being disputed, are quoted below for convenience:

> On March 9, 1951, a group of planters headed by Eugenio Lopez, Sr., Ernesto Oppen, Jr., Jose Soriano, Jose M. Tuason, Carlos Revilla and others, assumed the management and operation of the business affairs of the BISCOM, such management having brought about increased efficiency in the factory and considerable reduction in the operational expenses of the BISCOM. This group of planters formed a corporation known as the Philippine Planters Investment Company, Inc., and on July 18, 1951, the Binalbagan-Isabela Sugar Co., Inc. and the Philippine Planters Investment Co., Inc. executed a management contract whereby the latter corporation shall have the general management and conduct of the business affairs of the Binalbagan-Isabela Sugar Co., Inc. and for such services the BISCOM shall pay the Philippine Planters Investment Co., Inc. 5% of all the gross income, sales, expenses, purchases and other receipts and disbursements from March 9, 1951. All expenses of operation and management including salaries of personnel, officials as well as employees and laborers, traveling expenses, miscellaneous expenses shall be borne by the BISCOM.
>
> On August 17, 1951, the Board of Directors of both corporations agreed that the management fee of the Philippine Planters Investment Co., Inc. should be 1% of all the gross income, sales, expenses, purchases and other receipts and disbursements of the principal from March 9, 1951.
>
> A minority group of stockholders of the Binalbagan-Isabela Sugar Company, Inc., headed by Enrique Montilla, filed in the Court of First Instance of Manila a civil action entitled ISABELA SUGAR CO., INC., as stockholder of the Binalbagan-Isabela Sugar Co., Inc., in its own behalf and in behalf of other stockholders who may desire to join herein, Plaintiff, vs. EUGENIO LOPEZ, ERNESTO OPPEN, JR., JOSE SORIANO, CARLOS REVILLA, RICARDO NEPOMUCENO, and JOSE M. YUSAY; THE PLANTERS' INVESTMENT CO., INC.; and THE BINALBAGAN-ISABELA SUGAR CO., INC., Defendants, Civil Case No. 14831. It is claimed in the complaint that the management contract is illegal on the ground that (1) both corporations have interlocking directors and (2) that it was not necessary that the business affairs of the BISCOM be entrusted to the Philippine Planters Investment Co., Inc.,

but should be managed by the former. The complaint was dismissed in a decision rendered by the Court of First Instance on March 31, 1954. Plaintiff did not appeal from said decision. (Exhibit D).

While the said case was pending, the Binalbagan-Isabela Sugar Co., Inc. and the Philippine Planters Investment Co., Inc., executed another management contract dated January 15, 1953 (Exh. C) the full text whereof is hereunder reproduced:

MANAGEMENT CONTRACT

THIS AGREEMENT, made and executed in the City of Manila, Philippines, this 15th day of January, 1953, by and between -

The BINALBAGAN-ISABELA SUGAR CO., INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the Chronicle Bldg., Manila, herein represented by its President, Mr. Eugenio Lopez, duly authorized by its Board of Directors to represent it in this transaction and hereinafter to be known as the PRINCIPAL;

The PHILIPPINE PLANTERS INVESTMENT CO., INC., a corporation likewise duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the Chronicle Building, Manila, herein represented by its President Dr. Jose Soriano, duly authorized by its Board of Directors to represent it in this transaction, and hereinafter to be known as the MANAGER,

WITNESSETH: That

WHEREAS, the Board of Directors of the MANAGER adopted a resolution on January 13, 1953, requesting the PRINCIPAL, for the reasons therein stated, "To agree to an amendment of the wording of its contract with the Philippine Planters Investment Co., Inc., as embodied in the resolution of February 6, 1952 of the Board of Directors of the Philippine Planters Investment Co., Inc., clarifying said contract so as to express the true and real intention of the parties, to wit, that the Philippine Planters Investment Co., Inc. will continue the management of the Binalbagan-Isabela Sugar Co., Inc. and waives only its right to collect pendente lite the compensation to which it is entitled under its management contract dated July 18, 1951, as amended on August 7, 1951, with the Binalbagan-Isabela Sugar Co., Inc.", copy of which resolution is hereto attached as Annex "A" and made an integral part of this agreement;

WHEREAS, by way of compromise, the PRINCIPAL offered the MANAGER to continue with the general management of the business affairs of the PRINCIPAL, under the terms and conditions specified in a resolution adopted on January 14, 1953 by the Board of Directors of the PRINCIPAL, a copy of which resolution is hereto attached as Annex "B" and made an integral part of this agreement;

WHEREAS, the MANAGER has accepted the compromise offer of the PRINCIPAL, referred to in the next preceding paragraph hereof;

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the covenants herein contained, the PRINCIPAL and the MANAGER do hereby agree and stipulate that:

1. Both the PRINCIPAL and the MANAGER do hereby forever discharge and release one another of any and all claims and demands arising from or connected with, directly or indirectly, the management contract, dated July 18, 1951, as amended on August 7, 1951, between said parties as well as the resolution of February 6, 1952 of the Board of Directors of the MANAGER, which was accepted by the PRINCIPAL in a resolution adopted on February 7, 1952 by its Board of Directors, whatever interpretation may be given to the agreement embodied in said resolution. Said management contract of July 18, 1951, as amended, and said agreement under the aforesaid resolutions of February 6, 1952 and February 7, 1952, shall henceforth be considered as set aside and superseded by this new management contract;

2. The MANAGER is hereby given the general management of the business affairs of the PRINCIPAL under the following terms and conditions:

(a) The management of the PRINCIPAL by the MANAGER shall be for a period of FIVE (5) years effective as of March 9, 1951;

(b) The MANAGER shall receive as compensation for its services Ten (10%) Per Centum of the gross income of the PRINCIPAL during the term of this agreement contract. By "gross income" is meant all receipts of the business, profits from sales of and dealings in property, interest, rent, dividends on stock held or owned by the PRINCIPAL, gains, profits, and income derived from any source of whatever kind and nature connected with the business of the PRINCIPAL. "Receipts" of the business shall exclude loans contracted by the PRINCIPAL from banking institutions and entities and payments by planters of crop loans to the PRINCIPAL.

(c) Whatever amounts may have already been paid to the MANAGER as management fees, pursuant to the former management contract of July 18, 1951, as amended, shall be adjusted and credited to the MANAGER as payment on account of its compensation under Paragraph 2, subsection (b), supra of this agreement.

This management contract covering a period of five years, from 1951 to 1956 (Exhibit H) was extended for another five years, up to 1961 (Exhibit H-1) and has been further extended to another five years, to expire in 1966 (Exhibit H-2).

When the BISCOM was the one managing its own business affairs, Mr. Enrique Montilla being then its General Manager, it suffered tremendous losses and the planters in the Binalbagan district were not in good terms with the management of said corporation.

In the decision of the Court of First Instance of Manila, the following appears (Exhibit D, page 14):

> "Immediately after the organization of BISCOM, Enrique J.C. Montilla was appointed general manager of the corporation. The records of the case show that during the first years of BISCOM, it suffered heavy financial reverses. Thus, BISCOM's profit and loss statement for the period January 31, 1947 to December 31, 1947 (Exh. 16) shows losses in the amount of P187,543.15; for the period January 31, 1948 to October 3, 1948 (Exh. 16-B), a loss of P195,969.56; and for the period November 1, 1948 to October 31, 1949, a loss of P288,349.25. As of March 9, 1951, when management of BISCOM was transferred from the Montillas to the Binalbagan planters, the total indebtedness of BISCOM to the Rehabilitation Finance Corporation was P12,027,645.64 (Exh. K). As of the same date, BISCOM's indebtedness to the Philippine National Bank was P3,942,514.50 (Exh. EE). Both accounts bore interest at the rate of 6% per annum. (TSN. 137-141, hearing of May 11, 1964.)

Another reason why the Binalbagan-Isabela Sugar Company placed the management of its business affairs in the hands of the Philippine Planters Investment Company is that the latter is the majority stockholder of the former. It owns 399,410 shares of the BISCOM which constitutes 99.85% of the outstanding capitalization of 400,000 shares of the BISCOM and

> the rest of 990 shares are owned by individual persons (Exhibit I; t.s.n. 141-145, hearing of May 11, 1964). Because of this proprietary interest of the Philippine Planters Investment Company in the BISCOM, the latter had expected that the Philippine Planters Investment Company will exert all efforts to make the business of the BISCOM very successful. (Pp. 6-9, Memorandum for Petitioner.)

Respondent claims, under the circumstances mentioned above, that petitioner is a commercial broker and as such it is subject to the percentage tax on the gross compensation it received from BISCOM, pursuant to Section 195 of the National Internal Revenue Code, as amended. On the other hand, petitioner contends that it had never acted as a broker in its relation with BISCOM but only as manager of its business affairs as provided in the contract of management.

Section 195 of the Revenue Code imposes a percentage tax of 6% of the gross compensation of commercial brokers. The term "commercial broker" is defined in Section 194(t) as follows:

> "Commercial broker" includes all persons, other than importers, manufacturers, producers, or bona fide employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, or negotiate freight or other business for owners of vessels, or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchant.

Petitioner was employed by BISCOM as its manager to manage or conduct its business affairs as owner or operator of a sugar central and its related activities. It was not hired to sell the sugar of BISCOM. As owner or operator of a sugar central, BISCOM was and is engaged in the production of centrifugal and white sugar out of sugar cane of the

planters adhered to it and also the manufacture of by-products. It lends money to sugar planters at interest. It maintains a hospital for its employees and the residents of the milling district. It owns a distillery which is leased to another for the manufacture of alcohol. It also owns sugar lands and residential lots leased to others. It operates a gasoline station and a motor pool to serve sugar planters. All these activities of BISCOM are handled and conducted by petitioner as manager under its management contract with the former. The sale of BISCOM's sugar abroad is handled by American brokers residing in the United States whose commissions as such brokers are paid by BISCOM. There is, therefore, no sense in the employment of petitioner by BISCOM if the sole purpose was to negotiate the sales of its sugar abroad. For all these services performed by petitioner for BISCOM, it can hardly be considered a commercial broker as defined in Section 194(t) of the Revenue Code.

The cases of A. Soriano y Cia. v. Coll. of Int. Revenue, G. R. No. L-8806, May 22, 1957 and J.M. Tuason & Co., Inc. v. Coll. of Int. Revenue, G. R. No. L-11530, June 30, 1960 (59 O.G. 6952), are cited in support of the view that petitioner herein may be considered a commercial broker. We have studied the two cases very carefully and we think that the facts of the said cases are totally different from those of the case at bar to justify the application of the doctrine therein enunciated to the latter.

In the Soriano case, A. Soriano y Cia. was employed by the Philippine Iron Mines, Inc. as a mining consultant and to negotiate sales of iron ores in Japan. As a mining consul-

tant, A. Soriano y Cia, was paid a fixed monthly compensation of ₱1,200.00, and for negotiating sales of iron ores in Japan, it was paid a commission of 2½% of the gross sales. There can, therefore, be no question that A. Soriano y Cia. was a commercial broker with respect to sales by it of iron ores for its principal. This is not so in the present case, where petitioner was employed not to sell sugar but to manage BISCOM's sugar central and its related activities, such as, the lease of sugar and residential lots and a distillery; lending money at interest to sugar planters; the operation and management of a hospital; and the making of purchases and disbursements for purposes essential in carrying out the various activities of BISCOM.

In the Tuason case, the services of J. M. Tuason & Co., Inc. were employed by Varsity Hills, Inc. to subdivide and sell five parcels of residential land in Quezon City. J.M. Tuason & Co., Inc. was not hired to manage Varsity Hills, Inc.; it was hired to sell residential lands. Accordingly, J. M. Tuason & Co., Inc. was rightly held to have acted as real estate broker. There is, therefore, no parity between that case and the case of herein petitioner.

Mention has been made of the fact that from 1952 to 1961 petitioner paid the fixed annual tax as commercial broker. The conclusion has been drawn that it held out itself as commercial broker. It is, therefore, a commercial broker when it intervened in the sales of sugar of BISCOM. This fact has been explained by petitioner's Manager, Roberto Villanueva, as follows:

The reason for this goes back to 1953 when the terms of the management contract was finalized. At that time, it was the intention of Philippine Planters Investment Company, Incorporated, in line with its policy of helping the planters of the milling districts to provide these planters with a service that would facilitate their selling of sugar at better prices and for that purpose, the license as commercial broker was taken. However, no transaction was ever entered into involving the purchase or the sale of planters' sugar acting as a broker. In subsequent years, because the amount of the license involved was, you might say, negligible or nominal — P150 yearly only, it was felt that, placing the company in the position of acting as a broker, should the need arise, was worth the expenditure of the P150.00 a year and for that reason, the license continued to be paid from 1953 up to the present. (T.s.n. pp. 20-21, hearing of Aug. 30, 1962.)

A person cannot be held a commercial broker for paying the fixed annual tax if he had not intervened in any brokerage transaction. The evidence does not disclose that petitioner had intervened in any transaction as a commercial broker. The compensation that it received for managing and handling the business affairs of another corporation cannot be held subject to the commercial broker's percentage tax simply because it held out itself as ready and willing to engage in business as commercial broker but was unable to do so for lack of clients.

Respondent's ruling as regards the taxability of managing corporations militates against the position taken by him in this case. In a ruling dated August 12, 1960, it was held that managing corporations are not independent contractors within the purview of Section 191 of the Revenue Code. Such corporations are only subject to the income tax and residence tax on whatever income is received from such employment contract. (BIR Ruling No. 355, Aug. 12, 1960.)

Finding the three assessments for commercial broker's percentage tax against petitioner not in order, the same are

hereby set aside. Accordingly, the surety bonds filed by petitioner to secure payment of the tax in question are ordered cancelled.

SO ORDERED.

Quezon City, December 28, 1964.

ROMAN H. UBALI
Associate Judge

I CONCUR:

AUGUSTO M. AUGINO
Acting Presiding Judge