REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

A. L. AMMEN TRANSPORTATION CO., INC., (ALATCO), BICOL TRANSPORTATION CO., INC. (BITRANCO), and CONSOLIDATED AUTO LINES, INC. (CAL),
Petitioners,

- versus -

C.T.A. CASE NO. 732

MELECIO DOMINGO, Commissioner of Internal Revenue,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue assessing against and demanding from petitioners the amounts of ₱39,406.00, ₱77,611.00, ₱113,139.00 and ₱186,215.00, as income tax, inclusive of 25% surcharge and compromise penalties for failure to file income tax returns for the years 1955, 1956, 1957 and 1958.

Petitioners A. L. Ammen Transportation Co., Inc., Bicol Transportation Co., Inc. and Consolidated Auto Lines, Inc. (hereinafter referred to as ALATCO, BITRANCO and CAL, respectively), domestic corporations organized in 1914, 1946 and 1953, respectively, are engaged in the business of land transportation by motor buses under separate certificates of public convenience issued by the Public Service Commission. Their offices or principal places of business are located at Naga, Camarines Sur.

On October 16, 1949, Alatco and Bitranco entered into a contract, denominated "Management Contract",

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for the operation of all the rolling stock equipment of the latter by the former for a period of five years (Exhs. 6 & B, pp. 91-93, BIR rec.). Upon the termination of the five year period, they entered into another contract (Exhs. B-1 & 8, pp. 36-39, CTA rec.) for the said operation by the former for another period of five years. By these contracts, the terms and conditions of which are identical, Alatco shall furnish all administrative, maintenance and operational personnel necessary for the operation of Bitranco's buses; all necessary office, "parada", shop and maintenance facilities; and all supplies, including tires, fuel, lubricants and spare parts. On the other hand, Bitranco agrees to deliver all its rolling stock equipment and to assume all responsibility for the maintenance of its operating rights and for the payment of all legal and judicial expenses and damages incidental to court actions and accident cases involving Bitranco. Revenues or receipts collected in the operation of Bitranco's buses shall be credited to Bitranco in the books of account to be kept by Alatco. Similarly, expenses incurred by Alatco in the joint operation of the parties' buses shall be divided between them according to an agreed formula and the share of Bitranco shall be debited to the account of the latter. In consideration of the operation of Bitranco's rolling stock equipment, the former company "shall pay to Alatco a monthly management fee therefor to be computed at the rate of one centavo for each kilometer of bus operation of the various buses of Bitranco x x x". Subsequently, on May 25, 1957, the supervening contract (Exhs. B-1 & 8) was amended to the effect that "as Management Fee the Alatco shall share in the monthly net profits of Bitranco on a fifty-fifty (50-50) basis".

In the meantime, on January 13, 1953, the Board of Directors of Cal, acting on a letter of Alatco dated December 23, 1953 and "considering the expenses that the Company (Cal) might incur, should it manage its own business x x x Resolved, That the Corporation pay to the A. L. Ammen Transportation Co., Inc., the sum of ₱1,000.00 a month, beginning January, 1954 as supervision and management fees." (Exhs. A & 10, pp. 89-90, BIR rec.)

All collections or revenues of Bitranco and Cal were turned over to the cashier of Alatco (p. 55, t.s.m.) who was paid by Alatco (p. 55, t.s.n.) and these collections were carried in separate books of accounts of petitioners (p. 56, t.s.n.), although they were deposited in banks in the accounts of Alatco (p. 59, t.s.n.). Furthermore, all expenses of Bitranco and Cal were paid for by Alatco, but the same were charged to the respective accounts of the two companies (p. 69, t.s.n.). And, finally, petitioners did not share in the profits and losses of the other (pp. 7, 9, 20, 62, 210, 230 & 234, t.s.n.).

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On the basis of their individual net incomes derived from the operation in question during the years 1955 to 1958, petitioners paid their corresponding income taxes. (p. 14, Respondent's Memorandum, CTA rec.)

Believing that petitioners have established a joint operation and an unregistered partnership, respondent Commissioner determined against them corporate income tax, surcharge and compromise penalties for the years 1955, 1956, 1957 and 1958 in the respective sums of ₱39,406.00, ₱77,611.00, ₱113,139.00 and ₱186,215.00 (Exh. 4, p. 133, BIR rec.).

From this decision, petitioners have appealed, praying that the determination of respondent be annulled; and in the alternative, that is, if respondent's decision is sustained, the income taxes paid by each of the petitioners for the years involved be credited against the deficiency income tax assessment, pursuant to the doctrine of equitable recoupment; and that they should not be held liable for surcharges.

The issues to be determined may be stated thus-

1. Whether or not petitioners have formed a joint venture or unregistered partnership taxable as a corporation under Section 24 of the Tax Code, in relation to Section 84 (b) of the same Code;

2. In the event petitioners are held liable for income tax under Section 24 of the Tax Code, whether or not the income taxes paid individually by them for the tax years involved may be credited pursuant to the doctrine of equitable recoupment; and

5. Whether or not petitioners are liable for 25% surcharge for failure to file income tax returns for their alleged joint venture or partnership pursuant to Section 72 of the Tax Code.

Anent the first issue, respondent, citing as authority the case of Collector vs. Batangas Transportation Co. and Laguna-Tayabas Bus Co., G.R. No. L-9692, January 6, 1958, argues that petitioners have contributed to a common fund consisting of the daily collections of passenger and freight fares which were merged; and that there was a common sharing in the expenses and profits.

We find no similarity in the facts of this case and those of Batangas Transportation Co. and Laguna-Tayabas Bus Co. In the cited case, the Supreme Court found that "the two companies contributed money to a common fund to pay the sole general manager, the accountants and office personnel attached to the office of said manager, as well as for the maintenance and operation of a common maintenance and repair shop. Said common fund was also used to buy spare parts and equipment for both companies, including tires. Said common fund was also used to pay all the salaries of the personnel of both companies, such as drivers, conductors, helpers and mechanics, and at the end of each year, the gross income or receipts of both companies were merged, and after deducting therefrom the gross expenses of the two companies, also merged, the net income was determined and divided equally between them, wholly and utterly disregarding the expenses incurred in the maintenance and operation of each company and the individual income of said companies."

In the case at bar, there was in reality no common fund because the daily receipts of Bitranco and Cal derived from the operation of their buses were separately credited to them in the books which Alatco, as manager, keeps for them. The handling of the revenues and the keeping of the accounts of Bitranco and Cal were merely incidental to the managerial functions of Alatco. Neither was there a contribution of property to a common fund, for there was no transfer of title of the units of Bitranco and Cal to Alatco. What was in reality transferred was the physical possession of the buses of Bitranco and Cal in order to substantiate the power of Alatco to operate the same.

The expenses of the operation were not shared equally among petitioner Alatco, Bitranco and Cal. The evidence shows that each of the petitioners shouldered its own expenses, for although the same were paid by Alatco, yet those pertaining to Bitranco and Cal were duly debited against them in the corresponding books of accounts.

Finally, there was no sharing in the profits and losses among petitioners. As a matter of fact, Alatco did not share in the loss incurred by Bitranco during the first year of its operation. This is particularly true between Bitranco and Cal which, admittedly, have no relationship with its other. The situation of petitioners at bar is unlike that in the Batangas Transportation Co. and Laguna-Tayabas Co. case, supra, where the constituent companies divided equally between them the net income derived from the joint operation.

Rather than as a joint venture or partnership, the relationship between Alatco and Bitranco on one hand, and between Alatco and Cal on the other, is one of lease of services. As compensation for operating the rolling stock equipment of Bitranco and Cal, Alatco received monthly stipends. Were we to hold them a joint venture or partnership and liable for corporate tax on a combined net income derived from the operation of the buses, we would be unduly disregarding the distinct corporate personalities of petitioners.

In view of the foregoing reasons, we are of the opinion and so hold that the petitioners did not constitute themselves into a joint venture or partnership and, therefore, they are not liable for corporate income tax under Section 24, in relation to Section 84 (b) of the Revenue Code.

Having held petitioners not liable for corporate income tax during the years under review, the determination of the two other issues becomes unnecessary.

WHEREFORE, the decision of respondent is hereby reversed. No costs.

SO ORDERED.

Manila, August 12, 1963.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge