Sit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN PLANNERS AMALGAMATED,
INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 3238

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

8/31/84

x - - - - - - - - - - - - - - x

D E C I S I O N

The case is one of a deficiency corporate income and delinquency percentage taxes assessment against petitioner which alleges to be a general professional partnership contemplated in Section 24(a) of the National Internal Revenue Code, as amended, to wit:

> "A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, and partnerships, no matter how created or organized, <u>but not including general professional partnerships</u>, in accordance with the following: xxx." (Underscoring supplied)

Petitioner doing business under the firm name of Asian Planners Amalgamated, Inc. with principal office in Cebu City, is a domestic corporation organized and existing under the laws of the Philippines. By the articles of incorporation it has for its primary purposes the following:

> "a) To develop and improve subdivisions, lands, and estates and to engage the services of competent professionals, artisans, skilled workers, and other persons that may be necessary to accomplish this purpose; except to engage in subdivision business;
>
> "b) To make and enter into all kinds of lawful contracts and agreements with any person, firm, partnership, corporation, association, establishment, institution, or entity for the development and improvement of subdivisions, lands, and estates and the construction, reconstruction, remodelling, or alteration thereon of buildings, or other structures; as well as all kinds of lawful contracts and agreements for the purpose of purchasing, acquiring, selling, exchanging or disposing of all kinds of lawful goods, wares, merchandise, or products of every class, kind, and description such as but not limited to, hardware and construction materials;"

Sometime on January 28, 1980 the Bureau of Internal Revenue Regional Office No. VII (Cebu City) advised the petitioner corporation of the verification of its income and business tax liabilities for the years 1974, 1975 and 1976 and the proposed assessment for deficiency income tax arising from disallowances/additional income as well as delinquency percentage tax on the unreported gross receipts derived from contractual services, respectively provided under Sections 24(a) and 205 of the National Internal Revenue Code as amended. Petitioner had its objection on the validity in a letter dated April 18, 1980. Notwithstanding, the respondent Commissioner of Internal Revenue proceeded with the issuance of the formal assessment and demand under notices on February 23, 1981 (Deficiency Income Tax for ₱227,733.92) and on April 6, 1981 (Delinquency Percentage Tax amounting to ₱68,917.74), computed as follows:

Deficiency Income Tax

ACR No. 60-6-07-000231-74/81

Net income per return - - - - - - - - - - - - - -		₱ 4,127.43
Add: Disallowance/additional income -		
Undeclared income - - - -	₱ 9,390.83	
Professional fees - - - -	30,846.74	40,237.57
Net income per investigation - - - - - - - - -		₱ 44,365.00
Income tax due thereon - - - - - - - - - - - - -		₱ 11,091.00
Less: Amount already assessed - - - - - - - - -		1,032.00
B a l a n c e - - - - - - - - - - - - - - - - - -		₱ 10,059.00
Add: 14% int.fr.2-23-76 to 2-23-79 - - - - - -		4,224.78
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - - -		₱ 14,283.78
		vvvvvvvvvvv

ACR No. 60-6-07-00075-75/81

Net income per return - - - - - - - - - - - - - -		₱ 13,787.12
Add: Disallowances/additional income -		
Professional fees - - - -	₱ 77,975.50	
Drafting expenses - - - -	5,337.25	
Miscellaneous expenses - -	1,735.28	
Project expense - - - - -	1,541.39	
Wedding gifts - - - - - -	500.00	87,089.42
Net income per investigation - - - - - - - - -		₱100,876.54
Income tax due thereon - - - - - - - - - - - - -		₱ 25,307.00
Less: Amount paid - - - - - - - - - - - - - - - -		-
B a l a n c e - - - - - - - - - - - - - - - - - -		₱ 25,307.00
Add: 14% int.fr.4-19-76 to 4-19-79 - - - - - -		10,628.94
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - - -		₱ 35,935.94
		vvvvvvvvvv

ACR No. 60-6-07-000103-76/81

Net income per return - - - - - - - - - - - - - - -		₱ 69,996.44
Add: Disallowances/additional income -		
Professional fees - - - - -	₱350,857.94	
Drafting expenses - - - - -	8,013.90	
Office & travelling expenses -	4,709.01	
Legal & audit fees - - - - -	2,162.00	365,996.44
Net income per investigation - - - - - - - - - -		₱ 435,739.29
Income tax due thereon - - - - - - - - - - - - -		₱ 142,509.00
Less: Amount paid - - - - - - - - - - - - - - - -		17,499.00
B a l a n c e - - - - - - - - - - - - - - - - - - -		₱ 125,010.00
Add: 14% int.fr.4-15-77 to 4-15-80 - - - - - - -		52,504.20
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - - - - -		₱ 177,514.20

Delinquency Percentage Tax

1 9 7 4

Gross receipts - 4th quarter. . . .	₱ 90,348.70	
3% tax due thereon	₱ 2,710.46	
25% tax due thereon	677.61	
T o t a l	₱ 3,388.07	
14% int. fr. 1/20/75 - 7/31/80. . .	2,621.15	
20% int. fr. 8/1/80 - 4/20/81 . . .	488.25	
TOTAL AMOUNT DUE		₱ 6,497.47

1 9 7 5

Gross receipts - 1st quarter. . . .	₱ 29,348.50	
3% tax due thereon	880.46	
25% surcharge	220.11	
T o t a l	₱ 1,100.59	
14% int. fr. 4/20/75 - 7/31/80. . .	813.47	
20% int. fr. 8/1/80 - 4/20/81 . . .	158.60	
TOTAL AMOUNT DUE		₱ 2,072.66

Gross receipts - 2nd quarter. . . .	₱154,049.00	
3% tax due thereon	₱ 4,621.47	
25% surcharge	1,155.37	
T o t a l	₱ 5,776.84	
14% int. fr. 7/20/75 - 7/31/80. . .	4,068.16	
20% int. fr. 8/1/80 - 4/20/81 . . .	832.49	
TOTAL AMOUNT DUE		₱ 10,677.49

Gross receipts - 3rd quarter. . . .	₱ 37,454.00	
3% tax due thereon	₱ 1,123.62	
25% surcharge	280.91	
T o t a l	₱ 1,404.53	
14% int. fr. 10/20/75 - 7/31/80 .	939.53	
20% int. fr. 8/1/80 - 4/20/81 . .	160.24	
TOTAL AMOUNT DUE.		₱ 2,504.30

Gross receipts - 4th quarter. . . .	₱ 30,000.00	
3% tax due thereon	₱ 900.00	
25% surcharge	225.00	
T o t a l	₱ 1,125.00	
14% int. fr. 1/20/76 - 7/31/80. .	712.84	
20% int. fr. 8/1/80 - 4/20/81 . .	162.12	
TOTAL AMOUNT DUE.		₱ 1,999.96

<u>1 9 7 6</u>

Gross receipts - 1st quarter. . .	₱242,189.22	
3% tax due thereon	₱ 7,265.61	
25% surcharge	1,816.42	
T o t a l	₱ 9,082.10	
14% int. fr. 1/20/76 - 7/31/80. .	5,754.81	
20% int. fr. 8/1/80 - 4/20/81 . .	1,308.81	
TOTAL AMOUNT DUE.		₱16,145.72

Gross receipts - 2nd quarter. . . N o n e

Gross receipts - 3rd quarter. . .	₱150,328.09	
3% tax due thereon	₱ 4,509.84	
25% surcharge	1,127.46	
T o t a l	₱ 5,637.30	
14% int. fr. 10/20/76 - 7/31/80 .	2,981.74	
20% int. fr. 8/1/80 - 4/20/81 . .	812.38	
TOTAL AMOUNT DUE.		₱ 9,431.42

Gross receipts - 4th quarter. . .	₱318,952.88	
3% tax due thereon	₱ 9,568.59	
25% surcharge	2,392.15	
T o t a l	₱ 11,960.74	
14% int. fr. 1/20/77 - 7/31/80. .	5,904.33	
20% int. fr. 8/1/80 - 4/20/81 . .	1,723.65	
TOTAL AMOUNT DUE.		₱19,588.72
T O T A L		₱68,917.74

By and large, petitioner contends that "It is, at most, a partnership; an aggrupation of seven (7) licensed practising architects (names deleted), as 'incorporators' but who, in truth and in fact, associated themselves together, each contributing money and industry to a common fund for the pursuit of a common profession, and with the intention and agreement to divide the profits of their common labor among themselves, as they did" correspondingly declared in their individual income tax returns and paid taxes due therefrom.

Respondent poses the rub wrapped up this wise: petitioner is a body corporate engaged in trade and business that clearly disqualifies it as a general professional partnership wherein "no part of the income of which is derived from engaging in trade or business" (Sec. 20(b) of the Tax Code as amended) and would thus let go the chips to fall where they may on the taxable corporate activities, so to speak.

The case was submitted for decision on the basis of the pleadings and record which revolves into the question of whether under the given facts petitioner is a general professional partnership for all intent and purpose of the Tax Code.

We may say at the outset that we fail to find for the petitioner. The record makes it clear that the petitioner is a stock corporation organized under the pertinent provisions of Act 1459 as amended (Corporation Code) having been registered with the Securities and Exchange Commission on January 21, 1971. The registration of the corporation is no idle ceremony and the reality thereof had emptied petitioner's claim to a general professional partnership of legal significance. It is sufficient for the purpose of the Income Tax law that the corporation be registered and organized and it cannot be denied that the petitioner is such. We thus find illogic such sprouting impressions precipitately broached by the petitioner that 1) it has not been legally formed or organized as a corporation pursuant to the provisions of the Corporation Law; 2) its registration as a corporation did not validate ipso facto an otherwise illegal act, i.e., corporation cannot be organized for the exercise of a profession; and 3) its being registered with the Securities and Exchange Commission is no sufficient proof that it is indeed a corporation. In short, petitioner would write requiem to its own corporate being. A flapdoodle of a now-you-have-now-you-don't milieu and an expedient wishful piffle indeed! We cannot bring ourselves to believe that the petitioner corporation could emasculate into a "mere shell without reality".

But far be it from a comedy of errors, there is no reason apparent from the record why petitioner's corporate existence could be ignored. First, petitioner's charter goes back to the year 1971 and thru the intervening years it has preserved and maintained its corporate organization. Second, it functions and transacts business in its corporate capacity continuously and actively and there is no evidence that it had ceased nor a suggestion that it was dismantled into a partnership. Third, it holds itself to the general public as a corporation and has consistently filed its income tax returns as a corporation. These are the compelling indicia of the separate life and operation consistent with the business purpose for which petitioner corporation was created and upon which the tax assessment sought by the respondent Commissioner of Internal Revenue are essentially addressed and directly brought to bear. The quibble on the much ado-ed all professional practising architects composition of the incorporating directors as would lend color to a professional partnership can hardly be a reassuring prospect that can easily be reconciled with the rule. Such a posture would stretch too far the effective range of expediency and gravely impair the end for which the statute was intended. It is non sequitur and brooks no instant exemption from the tax obligations incurred by the petitioner's undertaking as a corporate entity under the provisions of Section 24(a) on corporate income tax and Section 205 on percentage tax both of the Tax Code.

FOR ALL THE FOREGOING, we hold the petitioner corporation liable for the deficiency corporate income tax and delinquency percentage tax for the years in question in accordance with the respondent's assessment which payment is hereby ordered with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, August 31, 1984.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge