REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PILIPINAS NISSAN INC.,
Petitioner,

- versus -

C.T.A. Case No. 4229

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

2/15/94

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DECISION

Petitioner herein seeks for the cancellation of the assessment issued by the respondent assessing it for deficiency percentage taxes and compromises penalty on the ground that it is the "succesor-in-interest" of DMG, Inc. (DMG), another car manufacturing firm.

The undisputed facts are as follows:

On July 23, 1980, DMG. received an assessment letter dated July 7,1980 assessing said company in the sum of P10,192,693.54 as deficiency percentage taxes and P5,000.00 as compromise penalty covering the period from April 1, 1975 to March 31, 1976 and from April 1, 1976 to December 1976.

In the meantime, in October 1982, Pilipinas Nissan Inc. (PNI), the petitioner herein, was duly registered and incorporated as a domestic corporation. In the same year, it leased from the Development Bank of the Philippines (DBP) and used for its car manufacturing business the very same real properties where DMG formerly holds its office and business operations, and which it eventually purchased on June 1988.

After DMG filed its Urgent Request for Reconsideration, it was the petitioner PNI who received the final decision of the Commissioner dated December 1, 1987 demanding petitioner to pay, under threat of collection through summary remedies, the disputed assessment against DMG, Inc.

The letter-decision dated 1 December 1987, pertinently states:

> "With reference to the previous request for reconsideration/ reinvestigation filed by DMG INC., your predecessor in interest which was acquired by your firm and, therefore, has assumed all obligations/liabilities arising from your management and operation of said firm, x x x, please be informed that the above request was given due course by this Office provided that your predecessor in interest thru its authorized representatives and officials will submit its formal petition paper containing its objections and arguments as well as testimonial/documentary evidences in support of the said request for reinvestigation/reconsideration.
>
> It appears from the records of the case that your predecessor in

interest or its authorized officials failed to submit the desired documents, thus prompting this Office to consider the request for reinvestigation/reconsideration filed by your predecessor in interest, as abandoned or unsubstantiated.

Notwithstanding the non-substantiation aspect, this Office has evaluated the findings of the examiner and consider same as well taken.

xxx xxx xxx

Based on the foregoing considerations, this Office is hereby denying the request for reinvestigation/reconsideration filed by your predecessor in interest, DMG INC. for being without legal and factual basis.

In view thereof, you are requested to pay the total amount of P10,192,690.54 and deficiency percentage taxes for said period subject to the updating of interest, within ten(10) days from receipt hereof, otherwise, collection will be enforced thru summary remedies provided by law.

This constitutes the final decision of this Office on the matter.

Very truly yours,

SGD

BIENVENIDO A. TAN, JR,"

Being the final decision of the respondent on the matter, PNI filed this instant petition on February 18, 1988.

The respondent Commissioner did not present any evidence to sustain his claim. Instead, he moved for the submission of the case for the decision of this Court based on the pleadings and petitioner's evidence.

The basis of the respondent in assessing PNI for the tax deficiency of DMG, Inc. is that the "Petitioner Pilipinas Nissan Inc. has acquired DMG Inc., and, therefore, is deemed to have assumed the latter's obligations and liabilities, including the tax liability in question, arising from its management and operation of DMG, Inc.," (par. 5 of Answer to Amended Supplemental Petition for Review).

On the other hand, PNI argues that it could not be made liable to pay the assessed deficiency tax for it has a separate and distinct personality from that of DMG.

Thus, the only issue to be resolved in this case is whether or not PNI is liable to pay the deficiency percentage taxes and compromise penalty allegedly incurred by DMG.

We rule in favor of the petitioner.

A corporation is defined as an artificial being created by operation of law, having the rights of succession and the powers, attributes and properties expressly authorized by law or incident to its existence

(Sec. 2, Corporation Code). It is considered by law as a juridical person (Art. 44, New Civil Code) separate and distinct not only from other corporations but even from its own officers and stockholders. Consequently, the act or liability of a corporation, as a general rule, cannot be imputed as the act or liability of another person or corporation for it is recognized by law as having its own personality and is therefore answerable for its own official corporate act or liability. This is what is known as the theory of corporate fiction or identity.

While it may be true that the theory of corporate entity was not meant to promote unfair objectives (**Villañueva vs. Adre**, 172 SCRA 876), the corporate fiction or the notion of legal entity may only be disregarded when it is used to defeat public convenience, justify wrong, protect fraud, or defend crime and only then will the law regard two corporations as merged into one (**Remo Jr. vs. Intermediate Appellate Court**, 172 SCRA 405; **Cagayan Enterprises Inc. vs. Court of Appeals**, 179 SCRA 218). Thus, if it could be sufficiently proven that a corporation, like PNI, is merely set up in order to avoid payment of taxes, the courts shall not hesitate to "pierce the veil of corporate entity" in order to bring within reach those who are really responsible under the law (**Lidell & Co. vs. Collector**, L-9867, June 30, 1961).

However, the record of the case at bar is devoid of any evidence which may tend to prove that the contract of sale between PNI and DBP covering real properties formerly used by DMG in its business was a device or scheme particularly designed to commit a wrongdoing or to perpetuate fraud against the government. The respondent, while relying on the presumption of the correctness of an assessment, failed to take into account that in order to disregard the separate judicial personality of a corporation, the alleged wrongdoing must be clearly and convincingly established (**Del Rosario vs. NLRC**, 187 SCRA 777).

With the respondent opting not to present any evidence, We even find that PNI has sufficiently proved and established that it purchased the subject real properties in good faith. At the time that the contract of sale was perfected, there were no annotations of any notice of tax liens in the certificates of title of the real properties sold by DBP. For this reason and in the absence of any evidence that will sustain a contrary view, We cannot fairly presume that PNI had any actual knowledge of the alleged tax deficiency incurred by DMG nor of the assessment issued by the respondent as a consequence thereof. PNI acquired the properties from DBP and not from DMG. Moreover, PNI was not even in existence when DMG allegedly incurred the deficiency percentage taxes.

We also cannot find any sufficient basis from which we could draw a reasonable inference that PNI has assumed or is continuing the operations and business of DMG. In fact , PNI exclusively manufactures and assembles Nissan passenger cars while DMG used to manufacture and assemble Volkswagen cars .

There is therefore no basis for Us to pierce the veil of the corporate identity of either PNI or DMG and neither can the tax liability of DMG be imposed on the separately organized corporation of PNI.

Likewise, the record of the case at bar is totally wanting in evidence which will show that PNI ever had any business interest in DMG or that an agreement or contract was executed by the two corporations clearly establishing that PNI assumed the management or control of DMG. The unrefuted testimonies of petitioner's witnesses have in fact established that in no instance did PNI acquired any asset, equipment or shares of stock DMG.

Apparently therefore, the respondents assertion that PNI acquired DMG, which is the basic premise of the respondent in issuing the subject assessment, is a conclusion that was arrived at and entirely deduced from PNI's act of purchasing and conducting its business operations on the real property which it acquired from DBP but which was formerly used by DMG in its own car manufacturing business.

However, the mere purchase by a corporation of properties owned and used by another cannot by itself be interpreted as an acquisition of the corporation selling the same, as the respondent would like to imply, and much less does it result into the dissolution of either corporation since the act of acquiring and disposing properties are not by themselves grounds for the dissolution, merger, or consolidation of corporations. With equal perforce we cannot consider a corporation as having assumed the tax liability of the corporation whose property it acquired.

In fact, the acts of acquiring and disposing properties are but among the powers of a corporation which it could independently and generally exercise at the commencement of their corporate existence as expressly granted by law under Sec. 36 of the Corporation Code:

> "SEC 36. *Corporate powers and capacity.* - Every corporation incorporated under this Code has the power and capacity:
>
> xxx xxx xxx
>
> (7) To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution.
>
> xxx xxx xxx"

It must also be stressed that PNI is engaged in the business of car manufacturing, and in pursuit thereof, the law expressly granted it the power to do things necessary to carry out corporate purpose or business. **(Land Bank of the Philippines vs. Commissioner on Audit,** 190 SCRA 154)

Therefore, in the absence of fraud, We could not see anything wrong or unusual with PNI, in seeking to acquire properties necessary for its operations and in the exercise of its power as a corporation, leased and then purchased real properties which had been actually used, devoted and had also been found suitable by another corporation like DMG for the very same business of car manufacturing. It may even be considered by some as a sound business practice.

WHEREFORE, in view of the foregoing, judgment is hereby rendered cancelling the assessment issued by the respondent assessing the petitioner for deficiency percentage taxes amounting to P10,192,693.54 and compromise penalty in the amount of P5,000.00.

SO ORDERED.

QuezonCity, Metro Manila, February 15, 1994.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals