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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

November 2, 1959

P. J. KIENER CO., LTD.,
Petitioner,

- versus -

C.T.A. CASE NO. 102

November 2

ANTONIO J. ARANETA, as
Collector of Internal
Revenue,
Respondent.

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

DECISION

This is an appeal from the decision of the respondent Collector (now Commissioner) of Internal Revenue, assessing against and demanding from the petitioner the sum of ₱37,032.02 as deficiency contractor's percentage tax, surcharge, and compromise penalty for the period from the 1st quarter of 1949 to the 2nd quarter of 1950. The case was submitted for judgment on the pleadings, pursuant to Section 10, Rule 36, of the Rules of Court.

The petitioner, a limited co-partnership duly registered with the Securities and Exchange Commission, is engaged in the business of a general contractor. Pursuant to a subcontract entered into with Fortunato Concepcion, Inc., it undertook the construction of the Gapan-Sta. Rosa Road, for which it was paid the sum of ₱1,288.009.06. On the basis of this receipt, petitioner was assessed the amount of ₱32,200.22, as contractor's percentage tax and surcharge, plus a compromise penalty of ₱100.00 (Annex "C", Amended Petition for Review).

Upon reinvestigation conducted in pursuance to petitioner's request, the respondent assessed against and demanded from it the amount of ₱36,832.02, itemized as follows:

2% tax due on ₱1,733,829.33	₱34,676.59
Less: Taxes paid	5,210.98
Deficiency tax	₱29,465.61
Surcharge (25%)	7,366.41
AMOUNT STILL DUE AND COLLECTIBLE	₱36,832.02

and the sum of ₱200.00 as compromise penalty (Annex "E", Amended Petition for Review). This assessment was appealed to the Conference Staff of the Bureau of Internal Revenue, which recommended its affirmance. This recommendation was approved and the assessment reiterated by the respondent (Annex "G", Amended Petition for Review).

Of the total amount of ₱36,832.02, the sum of ₱32,200.22 represented the assessment of the contractor's tax, including surcharge, on the amount of ₱1,288,009.06 which the petitioner, as sub-contractor, received from Fortunato Concepcion, Inc., for the construction of the Gapan-Sta. Rosa Road (Philippine Rehabilitation Project PR-8(87) in 1948-1949. (Par. 5 and Annex "C", Amended Petition for Review; Par. 4, Answer.) And the difference between the sums of ₱36,832.02 and ₱32,200.22 amounting to ₱4,631.80 represented the deficiency tax, plus surcharge, on receipts realized by the petitioner as subcontractor in other projects (Lumot Diversion Project and the U. S. Military Cemetery at Fort William McKinley), liability for which the petitioner has admitted. (Last paragraph, Motion for Judgment on the Pleadings, dated April 11, 1959, pp. 169-170, CTA rec.)

Fortunato Concepcion, Inc., paid in full the 2% contractor's tax amounting to ₱33,839.40 on the full contract price of ₱1,691,969.93 received by it for the construction of the Gapan-Sta. Rosa Road (Par. 11, Amended Petition for Review; Par. 1, Answer). As a result of such payment, this company filed with the respondent a claim for the refund thereof. Action on this claim is being held in abeyance until after the issues raised in the instant case shall have been finally resolved. (Answer to Interrogatories, p. 111, CTA rec., Additional Interrogatories, p. 113, CTA rec., Reply to Opposition to Motion for Leave to Serve Additional Interrogatories, pp. 118-119, CTA rec., Resolution dated October 10, 1958, pp. 121-124, CTA rec.)

The petitioner agreed to pay the compromise penalty of ₱200.00 should the legality of the assessment be finally upheld. (See Surety Bond filed by petitioner, pp. 52-53, CTA rec.)

The only issue to be resolved is whether or not the petitioner, as a sub-contractor, is liable for the payment of the percentage tax prescribed by Section 191 of the National Internal Revenue Code on the amount received by it from the principal contractor, Fortunato Concepcion, Inc., in the construction of the Gapan-Sta. Rosa Road.

The pertinent provisions of Section 191 of the National Internal Revenue Code, prior to its amendment by Republic Act No. 588, read:

> "Sec. 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others.--Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; x x x shall pay a tax equivalent to two (now three) *per centum* of their gross receipts."

There is no dispute that the principal contractor, Fortunato Concepcion, Inc., was a different and separate entity from the herein petitioner; that the construction job in the Gapan-Sta. Rosa Road (Philippine Rehabilitation Project PR-8 (87) was actually performed by the petitioner as sub-contractor by virtue of a contract with the principal contractor which received the full contract price of ₱1,691,969.93, on which it duly paid the sum of ₱33,839.40 representing the 2% contractor's percentage tax; that the petitioner, as sub-contractor, received from Fortunato Concepcion, Inc., the sum of ₱1,288,009.06 for undertaking the construction work, and which is the basis of the deficiency assessment of ₱32,200.22 now in question.

The word "contractor" has been authoritatively defined as follows:

> "The word 'contractor' when standing alone or not restrained by the context or particular words, may mean a subcontractor, or any person remotely engaged under contract and doing the work, as well as the original contractor. Such a person is a contractor as well as the original contractor. This has been frequently so decided, and such is the generic or more comprehensive meaning

of the term." (9 Words and Phrases, p. 339, citing Mundt v. Sheboygan & F. Du L. R. Co. 31 Wis. 451, 457; underlining supplied.)

"A contractor is one who agrees to do anything for another, and this general term has been held to include either those who have made contracts directly with the owner of the premises or those who have contracted with the contractor." (Id. citing Lester vs. Houston, 8 S. E. 366, 369, 101 N. C. 605.)

"In a narrow sense, 'contractor' is any person who contracts with another, and a subcontractor is a person who has entered into contract, express or implied, for performance of act with person who has already contracted for its performance. x x x" (Id. p. 339, citing Priby v. Lee, 191, A 105, 15 N. J. Misc. 292.)

The term "gross receipts" means the whole, entire, total receipts, as opposed to net receipts (18-A Words and Phrases, Supplement p. 195, citing Taylor vs. Rosenthal, 213 S. W. 2nd 435, 437, 308 Ky. 4); and when used interchangeably with the words, "gross proceeds" for sales tax purposes, it means the whole price received without deduction for the value of labor performed (Id., citing Ferguson vs. Cook, 220 S. W. 2d 808, 810, 215 Ark. 313); similarly when the same words are used in relation to statute requiring motor carrier to pay gross receipts tax, it means, the whole, entire, total receipts. (Id., Id., Savage v. Com ex rel. State Corp. Commission, 45 S. E. 2d 313, 317, 186 VA 1012.)

Hence, the gross receipts received by the petitioner from the Fortunato Concepcion, Inc. pursuant to a subcontract to construct the Gapan-Sta. Rosa Road are distinct and separate from the gross receipts received by the latter as principal contractor. While it is true that the petitioner and the Fortunato Concepcion, Inc., are engaged in the same business of contractor, still their individual gross receipts cannot be treated or merged as one for purposes of tax incidence, because they are two different entities, and their activities for tax purposes are also different. The Fortunato Concepcion, Inc., derived its gross receipts as awardee of the contract for the construction of the Gapan-Sta. Rosa Road (Philippine Rehabilitation Project PR-S (87), while the petitioner received its gross receipts in question from the said Fortunato Concepcion, Inc., as subcontractor. Consequently, the petitioner, as subcontractor, is liable for the contractor's tax prescribed by Section 191 of the Tax Code on the gross receipts realized by it, regardless of the source of the amount and the extent of the services performed. As aptly stated by the Supreme Court, in commenting upon a similar provision of law (Section 192, Tax Code), "this percentage tax is based upon gross receipts of carriers, independently of the source of such receipts. Where the law does not distinguish, neither may we." (Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-12100, and Collector of Internal Revenue vs. Bisaya Land Transportation Co., Inc., G. R. No. L-11812, May 29, 1959.)

To our mind, the fact that the tax is imposed both on a principal contaactor and a sub-contractor of a single and the same construction work, the sub-contractor's tax liability being computed on the gross sum received by him from the principal contractor and the tax liability of the principal contractor being based on the total amount he received under the contract without deducting the amount paid to the sub-contractor, does not amount to imposing and collecting the same tax on the same subject matter twice. The tax imposed under Section 191 of the National Internal Revenue Code is a tax on business and occupation and is, therefore, an excise tax. What is being taxed is the act of engaging in any of the occupations or businesses covered therein. In this particular case, it is a tax on the business as contractor. The gross receipt derived therefrom is made only as the basis for the computation of the amount of the tax which should be paid by the contractor. Hence, the tax of two (2%) _per centum_ on gross receipts should be imposed on each and every contractor regardless of the source or sources of the gross receipts as long as the same are derived from his occupation as contractor.

WHEREFORE, finding the deficiency assessment appealed from in accordance with law, the petitioner is hereby ordered to pay to the respondent or his authorized representatives the sum of ₱37,032.02, as deficiency contractor's percentage tax, surcharge and compromise penalty. Upon the finding that the petitioner is liable for the deficiency contractor's percentage tax and surcharge in question, and that it admitted liability for the compromise penalty of ₱200.00 should the legality of the assessment be finally upheld, it follows that it is liable for said amount of ₱200.00 as compromise penalty. With costs against the petitioner.

SO ORDERED.

Manila, November 2, 1959.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

I abstain in view of my participation in the consideration of this case during its pendency in the Bureau of Internal Revenue.

ROMAN M. UMALI
Associate Judge