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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

May 22/72

NORTON AND HARRISON CO.,
Petitioner,

- versus -

C.T.A. CASE NO. 1029

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This case is interrelated with C.T.A. Case No. 254 entitled "Norton & Harrison Co. v. Commissioner of Internal Revenue," involving deficiency sales taxes from July 1, 1949 to March 21, 1953. Said case was appealed to the Supreme Court as G.R. No. L-17618 entitled "Commissioner of Internal Revenue v. Norton & Harrison Company." Reversing the decision of this court, the Supreme Court found Jackbilt Concrete Block Co., Inc. as an alter ego of Norton & Harrison Co. in its decision promulgated August 31, 1964 and ruled that the basis of the computation of the sales taxes involved in said case should be the sale of the cement blocks to the public and not to Norton.

In the meanwhile respondent assessed petitioner, Norton & Harrison Co., on February 27, 1960 in the aggregate amount of ₱86,673.00 as deficiency income taxes for the years 1951 to 1958, inclusive, including 50% surcharge, also on the theory that Jackbilt Concrete Block Co., Inc. is an alter ego of petitioner, hence the income of Jackbilt should be consolidated or merged with the income of Norton for purposes of the income tax. The breakdown of the assessment is as follows:

90-1-655-59/51

Net income per return	. . . .	P299,957.14
Add: Additional income:		
Net income of Jackbilt Concrete Block Corp.	. . . .	94,585.00
Net income per investigation	. . .	P394,542.00
Tax due thereon	. . . .	P102,472.00
Less: Amount already assessed on both corp.	. . . .	94,905.00
B a l a n c e	. . . .	P 7,567.00
Add: 50% Surcharge	. . . .	3,784.00
DEFICIENCY TAX DUE	. . . .	P 11,351.00

AGR-176-59/52

Net income per return	. . . .	P213,414.28
Add: Additional income:		
Net income of Jackbilt Concrete Block Corp.	. . . .	94,584.76
Net income per investigation	. . .	P307,999.00
Tax due thereon	. . . .	P 78,240.00
Less: Amount already assessed on both corp.	. . . .	70,673.00
B a l a n c e	. . . .	P 7,567.00
Add: 50% Surcharge	. . . .	3,784.00
DEFICIENCY TAX DUE	. . . .	P 11,351.00

90-AGR-00176-59/53

Net income per return	. . . .	P233,181.20
Add: Additional income:		
Net income of Jackbilt Concrete Block Corp.	. . . .	88,696.00
Net income per investigation	. . .	P321,877.00
Tax due thereon	. . . .	P 82,126.00
Less: Amount already assessed on both corp.	. . . .	74,230.00
B a l a n c e	. . . .	P 7,896.00
Add: 50% Surcharge	. . . .	3,948.00
DEFICIENCY TAX DUE	. . . .	P 11,844.00

90-1ACR-202-59/54

Net income per return	₱194,700.00
Add: Additional income:	
Net income of Jackbilt Concrete Block Corp.	254,414.00
Net income per investigation . .	₱449,114.00
Tax due thereon	₱117,752.00
Less: Amount already assessed on both corp.	109,752.00
B a l a n c e	₱ 8,000.00
Add: 50% Surcharge	4,000.00
DEFICIENCY TAX DUE	₱ 12,000.00

90-1ACR-216-59/55

Net income per return	₱120,101.59
Add: Additional income:	
Net income of Jackbilt Concrete Block Corp.	161,202.31
Net income per investigation . .	₱281,304.00
Tax due thereon	₱ 70,765.00
Less: Amount already assessed on both corp.	62,765.00
B a l a n c e	₱ 8,000.00
Add: 50% Surcharge	4,000.00
DEFICIENCY TAX DUE	₱ 12,000.00

ACR-257-59/56

Net income per return	₱301,897.97
Add: Additional income:	
Net income of Jackbilt Concrete Blocks Corp.	156,047.51
Net income per investigation . .	₱457,946.00
Tax due thereon	₱120,225.00
Less: Amount already assessed on both corp.	112,224.00
B a l a n c e	₱ 8,001.00
Add: 50% Surcharge	4,001.00
DEFICIENCY TAX DUE	₱ 12,002.00

90-1ACR-256-59/57

Net income per return	₱233,464.21
Add: Additional income:	
Net income of Jackbilt Concrete Blocks Corp.	209,643.49
Net income per investigation . .	₱441,103.00

Net income per investigation . .	₱443,108.00
Tax due thereon	₱116,070.00
Less: Amount already assessed on both corp.	108,070.00
B a l a n c e	₱ 8,000.00
Add: 50% Surcharge	4,000.00
DEFICIENCY TAX DUE	₱ 12,000.00

90-AGR-273-59/58

Net income per return	₱270,878.35
Add: Additional income:	
Net income of Jackbilt Concrete Blocks Corp.	239,905.23
Net income per investigation	₱510,784.00
Tax due thereon	₱135,019.00
Less: Amount already assessed on both corp.	132,269.00
B a l a n c e	₱ 2,750.00
Add: 50% Surcharge	1,375.00
DEFICIENCY TAX DUE	₱ 4,125.00

The facts of this case appear in the partial stipulation of the parties which read as follows:

1. The petitioner is a corporation organized and existing under and in accordance with the laws of the Philippines with principal office and place of business during the years hereinafter mentioned at 660 Echague Street, Manila. The petitioner was originally incorporated on November 1, 1911 as evidenced by a Certificate issued on the same date by the then Executive Bureau of the Government of the Philippine Islands, a true copy of which Certificate and that of the Articles of Incorporation annexed thereto are attached hereto as Annexes "A" and "A-1", respectively, and made a part of this stipulation.

2. Jackbilt Concrete Block Co., Inc., is also a corporation organized and existing under and in accordance with the laws of the Philippines, having been incorporated on March 9, 1948 as evidenced by its Certificate of Registration issued by the Securities and Exchange Commission on the same date and its Articles of Incorporation are attached

hereto as Annexes "B" and "B-1", respectively, and made a part of this stipulation.

3. On July 27, 1948, an Agency Agreement was entered into between the petitioner and Jackbilt Concrete Block Co., Inc. whereby the petitioner was appointed the exclusive selling agent and distributor of Jackbilt blocks in the Philippines on a commission basis.

4. On June 10, 1949, the petitioner acquired by purchase all of the 3,000 shares representing the outstanding capital stock of Jackbilt Concrete Block Co., Inc. owned by J. A. Russel - 1,425 shares, J. P. Schafer - 1,425 shares, and J. Farretta - 150 shares, for ₱400,000.00.

5. On May 1, 1953, the exclusive distributorship agreement previously entered into on July 27, 1948 was changed and replaced by a Management Agreement whereby the petitioner was entitled to receive a fixed fee of ₱2,000.00 a month for its services in handling the sales of Jackbilt blocks, instead of a commission on a percentage basis; the management fee was subsequently increased to ₱4,000.00 on October 25, 1955 and to ₱5,000.00 a month on December 31, 1955, by mutual consent of both parties. (Pp. 1-2, Decision, G.R. No. L-17618, Commissioner of Internal Revenue vs. Norton & Harrison, August 31, 1964.)

6. On February 27, 1960, the petitioner received a letter dated February 19, 1960 from the respondent assessing and demanding payment of the aggregate amount of ₱86,673.00 as deficiency income taxes for the years 1951 to 1958, inclusive, including 50% surcharge. (BIR Rec., pp. 113-116).

7. On March 15, 1960, the petitioner through counsel filed with the respondent a letter dated March 14, 1960 requesting reconsideration and withdrawal of the aforementioned deficiency income tax assessment for the reasons stated in said letter. (BIR Rec., pp. 118-120).

8. On October 14, 1960, the petitioner

received another letter dated September 26, 1960 from the respondent denying petitioner's request for reconsideration but granting its alternative request that the disputed assessment be held in abeyance pending the determination of the question of whether or not Jackbilt Concrete Block Co., Inc. has been dissolved and merged with or absorbed by the petitioner, provided the petitioner execute a waiver of the statute of limitation. (BIR Rec., p. 124).

9. In a subsequent letter dated October 26, 1960 and filed with respondent on November 4, 1960 (BIR Rec., p. 125), the petitioner through counsel requested the respondent that, in view of the decision rendered on August 22, 1960 by this Honorable Court in C.T.A. Case No. 254, Morton & Harrison Co. v. Commissioner of Internal Revenue, whereby the majority of the Court relieved the petitioner from a deficiency sales tax assessment covering the period from July 1, 1949 to March 21, 1953 in the total amount of ₱32,662.99, the deficiency income tax assessment in question be withdrawn or at least suspended until the issue raised in the appeal taken by the respondent from said decision shall have been finally settled by the Supreme Court. A copy of said decision in C.T.A. Case No. 254 is attached hereto as Annex "C" and made an integral part of this stipulation of facts;

10. On December 19, 1960, the petitioner received a letter dated December 6, 1960 from the respondent denying the request contained in petitioner's letter of October 26, 1960 unless the petitioner submit a duly executed waiver of the statute of limitation in addition to a guarranty for the payment of the alleged tax liability. (BIR Rec., p. 127).

11. On August 31, 1964, the Supreme Court promulgated its decision in G.R. No. L-17618, entitled"Commissioner of Internal Revenue vs. Morton & Harrison Company," a copy of said decision is hereto attached as Annex "D" and made an integral part of stipulation;

12. The accounting period of the petitioner which is on the fiscal year basis begins on the 1st day of December in each year and ends on the 30th day of November following, in view of which it filed its income tax returns with the Bureau of Internal Revenue for the years 1951 to 1958, inclusive, on the following dates:

For Fiscal Year	Date of Filing
Ended Nov. 30, 1951	Mar. 8, 1952
" Nov. 30, 1952	Jan. 20, 1953
" Nov. 30, 1953	Jan. 22, 1954
" Nov. 30, 1954	Jan. 26, 1955
" Nov. 30, 1955	Jan. 24, 1956
" Nov. 30, 1956	Jan. 30, 1957
" Nov. 30, 1957	Jan. 27, 1958

Copies of its income tax returns for said fiscal years were presented at the preliminary hearing of this case held on April 24, 1964 as Exhibits "A", "A-1", to "A-7", inclusive, and are attached to the records of this case. (pp. 1, 12, 19, 27, 35, 41, 50 and 58). Copies of the same returns are also attached to the BIR records (pp. 23, et seq.).

13. The accounting period of Jackbilt Concrete Block Co., Inc., which is on the fiscal year basis begins on the first day of April of each year and ends on the 31st day of March following, in view of which this corporation filed its own income tax returns for the years 1951 to 1958, inclusive, on the following dates:

For Fiscal Year	Date of Filing
Ended Mar. 31, 1951	May 16, 1951
" Mar. 31, 1952	May 29, 1952
" Mar. 31, 1953	May 9, 1953
" Mar. 31, 1954	May 28, 1954
" Mar. 31, 1955	May 27, 1955
" Mar. 31, 1956	May 29, 1956
" Mar. 31, 1957	May 27, 1957
" Mar. 31, 1958	May 29, 1958

Copies of Jackbilt's income tax returns for said fiscal years were presented at the preliminary hearing on April 24, 1964 as Exhibits "C", "C-1", to "C-7" and are attached to the records of this case. (pp. 75, 80, 86, 92, 95, 103, 110 and 122). Copies of the same returns are also attached to the BIR records (pp. 23, et seq.)

14. All other facts not herein stipulated and agreed upon by the parties will be the subject of further stipulation, if possible, or of evidence to be presented at the hearing of this case.

The parties adduced evidence during the trial but there is nothing in the evidence of the petitioner that can affect the result of this case. The partial stipulation of facts very well states the pertinent facts.

The first question posed by this appeal is, whether Jackbilt Concrete Block Co., Inc. was an alter ego of Norton & Harrison Co. from 1951 to 1958, the period covered by the assessment in question. The record shows that it was.

In G.R. No. L-17618, supra, the Supreme Court found Jackbilt to be an alter ego of petitioner Norton & Harrison Co. and accordingly ordered the computation of their sales taxes from July 1949 to March 1953, the period involved therein, on that basis. A perusal of the decision, however, will readily show that said Honorable Court based its finding on the relationship of Jackbilt and Norton & Harrison Co. from 1949 to 1958 and not only from 1949 to 1953. Said the Court:

> The majority opinion is now before Us on appeal by the Commissioner of Internal Revenue, on four (4) assigned errors, all of which pose the following propositions: (1) whether the acquisition of all the stocks of the Jackbilt by the Norton & Harrison Co., merged the two corporations into a single

corporation; (2) whether the basis of the computation of the deficiency sales tax should be the sale of the blocks to the public and not to Norton.

It has been settled that the ownership of all the stocks of a corporation by another corporation does not necessarily breed an identity of corporate interest between the two companies and be considered as a sufficient ground for disregarding the distinct personalities (Liddell & Co., Inc. v. Coll. of Int. Rev. L-9687, June 30, 1961). However, in the case at bar, we find sufficient grounds to support the theory that the separate identities of the two companies should be disregarded. Among these circumstances, which we find not successfully refuted by appellee Norton are: (a) Norton and Harrison owned all the outstanding stocks of Jackbilt; of the 15,000 authorized shares of Jackbilt on March 31, 1958, 14,993 shares belonged to Norton and Harrison and one each to seven others; (b) Norton constituted Jackbilt's board of directors in such a way as to enable it to actually direct and manage the other's affairs by making the same officers of the board for both companies. For instance, James E. Norton is the President, Treasurer, Director and Stockholder of Norton. He also occupies the same positions in Jackbilt corporation, the only change being, in the Jackbilt, he is merely a nominal stockholder. The same is true with Mr. Jordan, F. M. Domingo, Mr. Mantaring, Gilbert Golden and Gerardo Garcia, while they are merely employees of the Norton; they are Directors and nominal stockholders of the Jackbilt; (c) Norton financed the operations of the Jackbilt, and this is shown by the fact that the loans obtained from the RFC and Bank of America were used in the expansion program of Jackbilt, to pay advances for the purchase of equipment, materials rations and salaries of employees of Jackbilt and other sundry expenses. There was no limit to the advances given to Jackbilt, so much so that as of May 31, 1956, the unpaid advances amounted to P757,652.45, which were not paid in cash by Jackbilt, but was offset by shares of stock issued to Norton, the absolute and sole owner of Jackbilt; (d) Norton treats Jackbilt employees as its own. Evidence shows that Norton paid the salaries of Jackbilt employees and gave the same privileges as Norton employees, an indication that Jackbilt employees were also Norton's employees. Furthermore, service rendered in any one of the two companies were taken into account for purposes of promotion; (e) Compensation given to board members of Jackbilt, indicate that Jackbilt is merely a department of Norton. The income tax return of Norton for 1954 shows that as President and Treasurer of Norton and Jackbilt, he received from Norton ₱56,929.95, but received from Jackbilt the measly amount of ₱150.00, a circumstance which points out that remuneration of purported officials of Jackbilt are deemed included in the salaries they received from Norton. The same is true in the case of Eduardo Garcia, an employee of Norton but a member of the Board of Jackbilt. His Income tax return for 1956 reveals that he received from Norton in salaries and bonuses ₱4,220.00, but received from Jackbilt, by way of entertainment, representation, travelling and transportation allowances ₱3,000.00. However, in the withholding statement (Exh. 28-A), it was shown that the total of ₱4,220.00 and ₱3,000.00 (₱7,220.00) was received by Garcia from Norton, thus portraying the oneness of the two companies. The Income Tax Returns of Albert Golden and Dioscoro Ramos, both employees of Norton but board members of Jackbilt, also disclose the same method of payment of compensation and allowances. The offices of Norton and Jackbilt are located in the same compound. Payments were effected by Norton of accounts for Jackbilt and vice versa. Payments were also made to Norton of accounts due or payable to Jackbilt and vice versa.

Norton and Harrison, while not denying the presence of the set up stated above, tried to explain that the control over the affairs of Jackbilt was not made in order to evade payment of taxes; that the loans obtained by it which were given to Jackbilt, were necessary for the expansion of its business in the manufacture of concrete blocks, which would ultimately benefit both corporations; that the transactions and practices just mentioned, are not unusual and extraordinary, but pursued

> in the regular course of business and trade; that there could be no confusion in the present set up of the two corporations, because they have separate boards, their cash assets are entirely and strictly separate; cashiers and official receipts and bank accounts are distinct and different; they have separate income tax returns, separate balance sheets and profit and loss statements. These explanations notwithstanding an overall appraisal of the circumstances presented by the facts of the case, yields to the conclusion that the Jackbilt is merely an adjunct, business conduit or alter ego, of Norton and Harrison and that the fiction of corporate entities, separate and distinct from each, should be disregarded. This is a case where the doctrine of piercing the veil of corporate fiction, should be made to apply. x x x (Commissioner of Internal Revenue v. Norton & Harrison Co., G.R. No. L-17618, August 31, 1964, 11 SCRA 714, 718-720)

and while there is nothing in the evidence adduced by petitioner during the hearing nor in the partial stipulation of facts to show that there was a change in the relationship of Jackbilt and Norton & Harrison Co. from 1954 to 1958, the petition for review on the other hand states that "There has been no change in the relationship between the two corporations since 1949 to 1958." That Jackbilt is an alter ego of petitioner is obviously an established fact.

In Yutivo Sons Hardware Company v. Commissioner of Internal Revenue, C.T.A. Case No. 673, September 30, 1968, this Court ruled that when a corporation is an alter ego of another, their income should be consolidated for the purposes of the Income Tax Law. Said this Court:

Assuming, arguendo, that Yutivo and Southern Motors are controlled by substantially the same interests, petitioner however argues that that circumstance by itself and without evidence of artificial shifting of income or expenses from one to the other does not confer authority upon respondent to attribute to Yutivo the net income earned by Southern Motors. According to petitioner, the Tax Code contains no provision authorizing respondent to require or permit two or more corporations, even if controlled by the same interests, to file a consolidated return of their separate incomes. On the contrary, Section 24(a) of the same Code explicitly recognizes the separate taxability of "every corporation organized in, or existing under the laws of, the Philippines, no matter how created or organized." It is therefore urged that instead of vesting respondent authority to consolidate the separate incomes of these corporations, the law merely authorizes him "to distribute, apportion, or allocate gross income or deductions" among them under the provisions of Section 44 of the Revenue Code. And such a limited authority may be exercised only when it is shown that a "distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income" of the controllingand the controlled corporations.

The relationship between petitioner and Southern Motors is a continuing one because the umbilical cord connecting them remains intact and uncut. As stated above and ruled by the Supreme Court in case G.R. No. L-13203, Southern Motors is merely a subsidiary or branch of Yutivo created for the purpose of selling the vehicles it assembles at retail and maintaining stores for spare parts as well as service repair shops; and being merely an instrumentality or adjunct of petitioner, its separate corporate entity should be disregarded in order to arrive at the true tax liability of Yutivo. If Southern Motors is but a part of Yutivo, acting merely as its department or branch in selling vehicles at retail and maintaining stores for spare parts as well as service repair shops, without any separate jural existence, the income of Southern Motors

> must necessarily be the income of Yutivo. The income of Southern Motors is no less taxable income in the hands of Yutivo merely because by its command and direction it is paid directly to Southern Motors in the performance of its duty as a mere subsidiary or branch of Yutivo; otherwise, the reach of the income tax law can be delimited by technical refinements or mere formalism. (Helvering v. Clifford, 309 U.S. 331.) Since income should be taxed to those who earn it, despite anticipatory agreements designed to prevent vesting of the income in the earners (Lucas v. Earl, 281 U.S. 111; Helvering v. Clifford, 309 U.S. 331; United States v. Joliet & Chicago R. Co., 315 U.S. 44; Commissioner v. Sunnen, 333 U.S. 591), respondent is correct in attributing to petitioner the net income earned by Southern Motors.
>
> The fallacy of petitioner's position is its assumption that Southern Motors, for purposes of determining the taxability of Yutivo, is still a corporation distinct and separate from petitioner. Herein lies the inapplicability of Section 44 of the Revenue Code. Petitioner and Southern Motors are not two "organizations, trades, or business x x x owned and controlled directly or indirectly by the same interests" under the provisions of Section 44; they are one and the same taxable person, for purposes of taxation.

Lastly, respondent assessed fraud penalty of 50% against petitioner. Resort to tax saving devices to lessen or defeat taxes does not constitute fraud. "Tax evasion" is a term that connotes fraud through the use of pretenses and forbidden devices to lessen or defeat taxes. The intention to minimize taxes, when used in the context of fraud must be proved to exist by convincing evidence and cannot be justified by mere speculation (Yutivo Sons Hardware Co. v. Court of Tax Appeals, G.R. No. L-13203, January 28, 1961, 1 SCRA 160; Liddell & Company, Inc. v. Collector of Internal Revenue, G.R. No. L-9687, June 30, 1961, 1 SCRA 632). The failure to consolidate the income of Jackbilt and Norton & Harrison Co. for income tax purposes was not made with fraudulent intent but was due to the belief that the two companies were separate entities for income tax purposes. It was only on August 31, 1964 that petitioner learned of its error when the Supreme Court rendered its decision in G.R. No. L-17618. Petitioner is not liable for 50% surcharge.

In resume, with the elimination of the 50% surcharge from the assessment in question, we find petitioner liable for deficiency income tax in the sums of ₱7,567.00, ₱7,567.00, ₱7,846.00, ₱8,000.00, ₱8,000.00, ₱8,001.00, ₱8,000.00 and ₱2,750.00 for the years 1951, 1952, 1953, 1954, 1955, 1956, 1957 and 1958, respectively, or the total amount of ₱57,731.00. In addition, pursuant to the provisions of Section 51(e) of the National Internal Revenue Code (as amended), petitioner is liable for 5% surcharge and 1% monthly interest on said deficiency computed from February 19, 1960, the date of notice and demand, until the tax is fully paid; provided, that the maximum amount of interest collected shall in no case exceed the amount corresponding to a period of three (3) years. (Comm. of Int. Rev. v. Limpan Investment Corp., G.R. Nos. L-28578 & L-28644, July 31, 1970; 34 SCRA 148, 151-152.)

WHEREFORE, the decision appealed from is hereby modified. Petitioner is hereby ordered to pay respondent Commissioner of Internal Revenue the total amount of ₱57,731.00, as deficiency income tax for the years 1951 to 1958, plus 5% surcharge and 1% monthly interest thereon from February 19, 1960 to the date of full payment, but in no case shall the 1% monthly interest collected exceed a period of three (3) years pursuant to the provisions of Section 51(e) of the National Internal Revenue Code, as amended. With costs against the petitioner.

SO ORDERED.

Quezon City, May 22, 1972.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge