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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ASTURIAS SUGAR CENTRAL, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 307

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

December 27, 1958

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DECISION

On August 16, 1956, the petitioner filed with this Court a petition for review of the decision of respondent holding it liable for the sums of ₱563.00 and ₱24,839.00, representing alleged deficiency income tax for the years 1950 and 1951, respectively. These income tax deficiencies were assessed as a result of the disallowance by respondent of the deductions on account of war losses claimed by petitioner. The amount of war losses claimed as deduction in the income tax return of petitioner for 1950 was ₱354,606.30; for 1951, ₱319,143.86.

Subsequent to the filing of the appeal, petitioner paid the sums of ₱563.00 and ₱24,839.00, to avoid penalties, and after the claim for refund thereof was denied by respondent, a supplemental petition for review was filed seeking the refund of said amounts.

The facts of the case, as narrated by counsel for respondent, are as follows:

> "Petitioner herein, Asturias Sugar Central, Inc., is a corporation duly organized and existing under the laws of the Philippines with office at Dumalag, Capiz (Par. 1, Stipulation of Facts). Since its organization, petitioner has been engaged in the manufacture of sugar from

sugar cane in its mill located in San Juan, Municipality of Dumalag, Capiz (Par. 3, Stip. of Facts). On or about April 18, 1942, the Asturias Sugar Central, Inc. was burned by the retreating USAFFE under its scorch earth policy and/or to resist enemy attack (Par. 4, Stip. of Facts). The Central was totally destroyed and was reconstructed only on or about 1947 (Par. 4, Stip. of Facts). The petitioner on February 26, 1948, filed with the Philippine War Damage Commission a claim for damages sustained on its properties during the war in the amount of ₱2,135,685.51 (Par. 5 & 6 Stip. of Facts). The War Damage Commission approved payment in favor of petitioner in the amount of ₱1,064,812.92 (Par. 7, Stip. of Facts), and extended the first payment on account of the approved claim in the amount of ₱426,525.16 under Treasury Warrant No. 1362433 dated February 29, 1950 (should be February 28, 1950) and the amount was deposited by the petitioner on May 7, 1950 at the Philippine National Bank, Iloilo Branch (Par. 8, Stip. of Facts). On November 3, 1950, petitioner received the second payment of ₱319,413.90 covered by Treasury Warrant No. 1463076 (Annex 'C') which amount was deposited on the same date by the petitioner with the Philippine National Bank, Iloilo Branch (Par. 9, Stip. of Facts). Together with the second check was a note informing petitioner that the amount would be the last payment because there were no more funds available (Par. 9, Stip. of Facts).

"The petitioner filed its income tax returns on the fiscal year basis ending October 31 of each year (Exhs. O, P, Q). In its income tax return for 1950, it claimed a deduction of ₱354,606.30 as war losses (Par. 10, Stip. of Facts). Upon proper verification respondent disallowed all deductions for war losses and consequently, notices of deficiency income tax assessments were issued against the petitioner in the amounts of ₱563.00 and ₱24,839.00 corresponding to the years 1950 and 1951. (Par. 12, Stip. of Facts). Petitioner paid the abovementioned amounts in the total sum of ₱25,402.00 under Official Receipt No. 719730 dated August 1, 1956 (Par. 13, Stip. of Facts). On October 25, 1956, petitioner requested the refund of the said amount /(Annex 'I') Par. 14, Stip. of Facts/ which request was denied by respondent in a letter dated November 23, 1956 (Annex 'H', par. 14, Stip. of Facts)." (Pp. 1-3, Memorandum for Respondent.)

The only issue presented for our consideration is whether the war losses in question were properly deductible in 1942, when the losses were actually sustained, or in 1950 and 1951, when petitioner was advised by the Philippine War Damage Commission that no further payment would be made, unless the Congress of the United States should provide additional funds.

Section 30(d) (2) of the Revenue Code allows the deduction from the gross income of a corporation of "all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise." If property is not insured against loss, the loss must be deducted in the year it is actually sustained. If property is insured against loss, "the amount of the loss must be reduced by the amount of any insurance or other compensation received, and by the salvage value, if any, of the property;" and the amount not so compensated for by insurance is deductible in the year the claim for indemnity is finally determined, since it is required that losses, to be deductible, must be "evidenced by closed and completed transactions." (Secs. 94, 96, Rev. Regs. No. 2, 39 O.G. 325, Feb. 11, 1941.)

On the ground that the losses sustained by it on account of the destruction of its properties on April 18, 1942 were covered by the war risk insurance provided in a law passed by the United States Congress, petitioner claimed as deduction in its income tax returns for 1950 and 1951, when its claim for indemnity was finally determined, the portion of its losses in the sums of ₱354,606.30 and ₱319,143.86 not compensated for by said insurance. In support of its claim that its losses were covered by insurance, petitioner relies mainly on Public Law 506 - 77th Congress of the United States. Respondent, on the other hand, claims that the losses sustained by petitioner were not covered by insurance; hence, such losses must be claimed as deduction in the year they were actually sustained, not in the years the claim for indemnity was finally determined.

The pertinent portions of Public Law 506-77th Congress of the United States relied upon by petitioner provide:

> "SEC. 5g (a). The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to section 5d of this Act; x x x The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which shall not be later than July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk of loss on all property of such type in the United States.

Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, x x x Provided, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Commission, with the approval of the Secretary of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

"(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage." (U.S. Statutes at Large, Vol. 56, Part I, pp. 175-176, quoted in Cu Unjieng Sons, Inc. v. Board of Tax Appeals, G. R. No. L-6296, Sept. 29, 1956.)

Commenting on the provisions of subsection (b) of Section 5g of Public Law 506-77th Congress of the U. S., the Supreme Court said:

"Pursuant to subsection (b) of said section 5(g), 'any loss or damage to any such property' referred to in subsection (a), 'sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge.'

x x x

> " . . . subsection (b) . . . is applicable only to losses or damages 'sustained subsequent to December 6, 1941, and <u>prior to the date determined by the Secretary of Commerce under subsection (a)</u>,' pursuant to which the protection under said Act of Congress 'shall be made available . . . on and after a date to be determined . . . by the Secretary of Commerce, <u>which shall not be later than July 1, 1942</u>.' . . ." (Cu Unjieng Sons, Inc. v. Board of Tax Appeals, <u>supra</u>.)

It is admitted that the property losses sustained by petitioner were due to action taken by the armed forces of the United States in resisting enemy attack and that the destruction of petitioner's properties occurred on April 18, 1942, that is, subsequent to December 6, 1941 and prior to July 1, 1942. Clearly, the losses sustained by petitioner were covered by the free insurance protection provided in subsection (b) of Section 5g of Public Law 506-77th Congress of the U. S. Our Resident Commissioner to the United States expressed the same view in a statement submitted on October 30, 1945 to the Committee on Territories and Insular Affairs of the Senate of the United States, viz:

> "The act of March 27, 1942, terminated on July 1, 1942, the free insurance protection of the War Insurance Corporation announced in the press releases issued by the Secretary of Commerce on December 12 and 22, 1941. Under the act, however, the War Damage Corporation was authorized to compensate loss or damage to property sustained during the period from December 7, 1941 to June 30, 1942, without requiring any contract of insurance or the payment of premium. The pertinent provision of the act on this point reads as follows:
>
> "'(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under

subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage.'

"Under this provision of the War Damage Act, property losses sustained in the Philippines during the period from December 7, 1941 to June 30, 1942, can thus be paid under the automatic insurance provision of the War Damage Corporation. It is, therefore, clear that Filipino and American property owners in the Philippines whose properties suffered damage during the period from December 7, 1941 to June 30, 1942, can receive compensation from War Damage Corporation under the present law.

x x x x

"Summarizing, it is submitted -

"1. That property losses in the Philippines sustained through enemy attack subsequent to December 6, 1941, and prior to July 1, 1942, are automatically covered by the War Insurance Corporation according to press release issued by the Secretary of Commerce on December 13 and December 22, 1941, and validated by the War Damage Act of March 27, 1942. x x x" (Quoted with approval in Cu Unjieng Sons, Inc. v. Board of Tax Appeals, *supra*; underscoring supplied.)

But it is contended on behalf of respondent that -

"Petitioner's contention that they were covered by the free insurance protection of Public Law No. 506-77th Congress of the United States, otherwise known as the War Damage Corporation Act, is immaterial to the case because the payment received by the petitioner for its losses were made under the Philippine Rehabilitation Act of 1946 and there is nothing in said Act to indicate that it is a continuation and/or implementation of the War Damage Corporation Act, notwithstanding the allegation to the contrary of the petitioner (p. 7, Counsel's Memorandum). While all claims for war losses were paid under the Philippine Rehabilitation Act, nobody is known to have been paid under the War Damage Corporation Act or Public Law No. 506-77th Congress of the United States." (Page 7, Memorandum for Respondent.)

The contention that any reference to Public Law 506-77th Congress of the United States is immaterial because the payment received by petitioner for its losses were made under the Philippine Rehabilitation Act of 1946 appears to us untenable. In the first place, there is no evidence that the payment made by the Philippine War Damage Commission to petitioner was solely and exclusively by virtue of the Philippine Rehabilitation Act of 1946. In the second place, assuming arguendo that the compensation received by petitioner was authorized by virtue of the Philippine Rehabilitation Act of 1946, it appears that Section 102 (a) of said Act authorized payment for damages covered by the free war insurance provided in Section 5g of Public Law 506-77th Congress of the United States. In providing in the 1946 Act for the payment of damages covered by the 1942 Act, the United States Congress in effect recognized the validity of the obligation of the United States Government under the 1942 Act. That the payment was actually made by the Philippine War Damage Commission, a commission created under the 1946 Act, and not by the War Damage Corporation created under the 1942 Act, does not in any manner affect the validity of petitioner's claim that its losses were covered by the 1942 Act. We should like to repeat here what our Resident Commissioner to the United States said: "It is, therefore, clear that Filipino and American property owners in the Philippines whose properties suffered damage during the period from December 7, 1941 to June 30, 1942, can receive compensation from War Damage Corporation under the present law."

(See Cu Unjieng Sons, Inc. v. Board of Tax Appeals, supra.) We have underscored the phrase "under the present law" to emphasize the point that the 1942 Act was still in force when that statement was made on October 30, 1945.

This case is disguishable from Cu Unjieng Sons, Inc. v. Board of Tax Appeals, supra. In the latter case, the Supreme Court held that the losses of petitioner sustained in 1945, during the battle for the liberation of Manila, were not compensated for by insurance or otherwise either under the 1942 Act or the 1946 Act within the meaning of Section 30 (d) of the Revenue Code. Petitioner's losses were not covered by the free war insurance provided in the 1942 Act because (1) said losses were not the result of "enemy attack", the American forces being on the offensive in 1945 when the losses were sustained; and (2) the losses were sustained in 1945 and not between December 7, 1941 and June 30, 1942, as provided in said Act. With respect to the 1946 Act, it is true that petitioner was paid compensation for its war losses, but, as stated by the Supreme Court, "the indemnity provided for in the Philippine Rehabilitation Act of 1946 was purely an obligation voluntarily assumed solely for moral considerations, and did not exist as a legal obligation prior to the approval of said Act on April 30, 1946." In other words, if the Philippine Rehabilitation Act was enacted, not in 1946, but in 1944 or before the losses were sustained by petitioner, such losses would have been "compensated for by insurance" within the meaning of Section 30 (d) of the Revenue Code.

In the instant case, the losses of petitioner were sustained on April 18, 1942, when the 1942 Act was already in force and effect, the same having been enacted on March 27, 1942; said losses were the result of the action taken by the USAFFE in resisting enemy attack, one of the risks insured against as provided in said Act; and that the losses were sustained within the period covered by the Act, that is, between December 7, 1941 and June 30, 1942. Accordingly, the decision of the Supreme Court in Cu Unjieng Sons, Inc. v. Board of Tax Appeals, supra, sustaining respondent's disallowance of the deduction in that case, argues strongly in favor of the allowance of the deduction in this case.

We are, therefore, of the opinion that the war losses sustained by petitioner on April 18, 1942 were compensated for by the free war insurance provided in Public Law 506-77th Congress of the United States. Consequently, the value of such losses, to the extent not compensated for by said insurance, is deductible from the gross income of petitioner in 1950 and 1951, when petitioner's claim for indemnity was finally determined, pursuant to Section 30 (d) of the Revenue Code. It was error for respondent to have disallowed the deduction.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby reversed, and respondent is hereby ordered to refund to petitioner the sums of

₱563.00 and ₱24,893.00, or a total of ₱25,402.00, with interest at the legal rate from the date of payment. No pronouncement as to costs.

SO ORDERED.

Manila, December 27, 1958.

R. M. Umali
ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO
concurs in a separate opinion.

Presiding Judge MARIANO NABLE
dissents in a separate opinion.

Aff'd. G R L-15013, Aug. 31, 1961.

ASTURIAS SUGAR CENTRAL, INC.,
Petitioner,

- versus -

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Respondent.

C.T.A.
CASE NO. 307

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CONCURRING OPINION

I CONCUR in every respect with the majority opinion of my colleague, Associate Judge Roman M. Umali, but desire to add the following observations:

As stated in the majority opinion, the loss to be deductible, must be "evidenced by closed and completed transactions." When a loss occurs, but there is a right or claim for indemnity therefor by "insurance or otherwise", the loss is not deductible until the indemnity or compensation is finally determined.

In Gu Unjieng vs. Board of Tax Appeals, G. R. No. L-6296, September 29, 1956, our Supreme Court has held that the compensation referred to in the Income Tax Law must be that secured either by "insurance or otherwise," the latter term having reference to compensation which is obtained or obtainable from a judicially enforceable right arising from law, contract, quasi-contract, tort or crime. In the instant case, as pointed out in the majority opinion, the loss sustained was covered by the automatic war risk insurance authorized by Public Law No. 506, 77th Congress, U.S. approved March 27, 1942 for which loss, compensation was recoverable by the petitioner. Even on the assumption that the compensation was one that arose not from a contract of insurance, nevertheless, said Public Law No. 506 affords a legally enforceable right in favor of the petitioner to recover compensation. Since the amount of compensation was not yet determined at the time the loss took place, the loss was not evidenced by a closed and completed transaction at the close of petitioner's fiscal period, and it was therefore authorized to postpone the deduction.

> "In order to be entitled to defer deductions for losses materially sustained within a given year, the right to compensation therefor, 'by way of insurance or otherwise', if any, must exist, however, prior to the conclusion of said year." (Cu Unjieng vs. Board of Tax Appeals, supra.)

The loss was materially sustained by the petitioner on April 18, 1942, but it had a right to compensation under the automatic war risk insurance established by said Public Law No. 506 the amount of the indemnity of which was not yet fixed at the close of its fiscal year. Consequently, the petitioner was entitled to defer or postpone the deduction of its war loss until the year in which the insurance reimbursement (or non-recovery thereof) was finally determined or ascertained (Commissioner v. Harwick, 1950, 184 F 2d 835; Boston & Maine M.R.R. vs. Comm., 206 F 2d, 617, 621-622), which in this case was so ascertained only in the years 1950 and 1951. The petitioner's war losses involved herein therefore were evidenced by closed and completed transaction only during the years 1950 and 1951 and as such, the losses were deductible only in said years.

Augusto M. Luciano
AUGUSTO M. LUCIANO
Associate Judge

Decision Aff'd.

ASTURIAS SUGAR CENTRAL, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 307

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DISSENTING OPINION

After a careful study of the case, I beg to disagree with my colleagues for I believe that the decision of the respondent should be affirmed.

The question here hinges on whether the war losses materially sustained by the petitioner in 1942 were deductible in 1942 or not later than immediately after the World War II or deductible in the years 1950 and 1951 when the petitioner was advised by the Philippine War Damage Commission that there would be no possible further payments upon its war damage claim.

As stated by the majority opinion, the only basis of postponing the deduction is due to the fact that in 1942 the losses were not yet evidenced by closed and completed transaction in that the petitioner was allegedly entitled to receive compensation for such loss under the quoted provisions of Public Law No. 506, 77th Congress of the United States.

Under the Income Tax Law, the deduction for losses sustained may be postponed if there is a compensation or indemnity recoverable by the taxpayer, the amount of which is still not fixed and such right to compensation is derived from insurance or otherwise. As stated by the Supreme Court in the case of Gu Unjieng vs. Board of Tax Appeals (citation in the majority opinion) the term "insurance" contemplates a contract. It is my belief that the so-called compensation, if any, established by Public Law No. 506 is not one arising from "insurance" nor any contractual obligation as the concept is used in the Income Tax Law. This is so because a contract of insurance requires, among others, consent given by the parties as to the terms thereof and the presence of a premium or consideration paid, both of which are absent in the instant case. The war damage money promised during or paid by the government after the war partakes of the nature of a charitable gift if not tinted with color of propaganda. In one word, these so-called obligations were not obligations enforceable for the simple reason that they were mere moral obligations at most. While Public Law No. 506 established a kind of compensation, yet, it is not insurance within the concept of the Inusrance Law (Act No. 2427). Not being compensation arising from an insurance contract, the possible right of the petitioner to indemnity, at most, is one arising from law. However, it is a right that is not enforcible. Public Law No. 506 does not unconditionally established the right to compensation of war losses, for the United States government (thru the Reconstruction Finance Corporation (U.S.) and/or the War Damage Corporation) reserved the discretion or authority to pay the same, depending upon the appropriation approved by Congress, so much so that, in fact, innumerable claims were not paid. In other words, granting for the sake of argument that a claimant was entitled to such compensation, the same was conditioned, first, upon the magnanimity of the Government of the United States and, second, upon the availability of funds having been set aside or appropriated. In one word, it is devoid of the essential element of a contract which is the establishment of an enforceable obligation.

The Philippine Rehabilitation Act of 1946 establishing the Philippine War Damage Commission expressly appropriated funds to cover losses during World War II from which petitioner had been paid its war damage claim. However, as held in the Cu Unjieng case, the war damage payments under the Philippine Rehabilitation Act were not compensation within the purview of Section 30(d) of the Tax Code.

There being no legally enforceable right to compensation established in 1942 to indemnify the material losses of the petitioner, the same became a closed and completed transaction in 1942, and such loss should have been deducted in 1942 or immediately after the war, and not in 1950 or 1951.

In view of the above considerations, I vote to affirm the decision of the respondent and to dismiss the petition for refund of the tax involved herein.

Decision Aff'd

MARIANO NABLE
Presiding Judge