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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

February 28, 1963

ANGELES ELECTRIC CORPORATION,
Petitioner,

- versus -

C.T.A.
CASE NO. 576

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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DECISION

The petitioner is a corporation organized and existing under the laws of the Philippines. It has a franchise to operate an electric plant in Angeles, Pampanga, under which it is required to pay a franchise tax of 2% of its gross receipts. During the period from April, 1954 to June, 1956, it supplied electric power to the Angeles Ice Plant, owned and operated by the principal stockholder of petitioner, under an arrangement whereby "the ice plant would use the generators of the electric plant to provide its power provided that it would pay for its share of fuel and oil expenses." The value of the fuel and oil actually consumed by and charged to the ice plant during said period was ₱14,757.70, which amount was paid directly by the ice plant to the supplier instead of to petitioner. Petitioner did not include said amount as part of its gross receipts or earnings for purposes of the franchise tax.

Respondent appraised the value of the electric power consumed by the ice plant at ₱43,701.78, instead of ₱14,757.70, and assessed the corresponding franchise tax in the sum of ₱874.03, plus the surcharge of ₱218.51, or a total of ₱1,092.54. Petitioner contested the assessment, and, upon refusal of respondent to reconsider the same, filed the instant appeal.

The sole issue presented is whether or not in its transaction with the ice plant it derived gross receipts which are subject to the franchise tax. Petitioner contends that it did not derive taxable gross receipts from the transaction. On the other hand, respondent claims that it did, and that the amount of the gross receipts was ₱43,701.78, the fair market value of the electric power consumed by the ice plant and not the value of the fuel and oil which was actually paid.

Respondent's main argument is that the arrangement between petitioner and the ice plant was not a valid contract as both are owned by the same persons. To quote from respondent's decision:

> "It may be stated in this connection that for the agreement in question to be valid, it must necessarily contain the essentital elements of consent, subject matter and consideration. It is noted, however, that the Angeles Ice Plant and the Angeles Electric Corporation are owned by the same persons so that there is no consent in the real sense of the word. Assuming that there is consent, the subject matter in mind when the Angeles Ice Plant paid for a portion of the fuel and oil expenses of the Angeles Electric Corporation must be the power produced by the latter and used by the former. The subject matter cannot be that portion of the fuel and oil expenses because they were not incurred by the Angeles Ice Plant. Even from the standpoint of sound accounting principle, the same cannot be sanctioned as deduction from the profit and loss state-

ment of the Angeles Ice Plant, otherwise the statement is distorted and not in accord with the facts." (Exh. 4; see also pages 2-3, Memorandum for Respondent, March 12, 1962.)

The position taken by respondent is difficult to understand. If, as contended, the arrangement between petitioner and the ice plant was not a valid contract solely by reason of the fact that the two entities are owned by the same persons, the same is true if the consideration for the sale of electric power to the ice plant was the fair market value thereof. A person can not sell to himself. It would follow that petitioner could not have derived taxable gross receipts or earnings in connection with the electric power supplied by it to the ice plant. (See University of Sto. Tomas v. Coll. of Int. Rev., G. R. Nos. L-11274 & L-11280, Nov. 28, 1958.)

It appears, however, that petitioner corporation is an entity distinct and separate from the Angeles Ice Plant. The arrangement entered into between the two entities whereby petitioner was to supply electric power to the ice plant, the latter to pay for its share of the value of fuel and oil consumed, was merely temporary, that is, until the ice plant could secure its own generator, which it did sometime in 1956. There is no claim or pretense that the transaction was entered into for the purpose of evading payment of the tax. The amount of the tax is insignificant to justify the risks of tax evasion. We are, therefore, constrained to hold the transaction between petitioner and the ice plant valid. Such being the case, petitioner derived gross receipts from the transaction in the sum of ₱14,757.54, the value of the fuel and oil charged to and paid by the ice plant. Although this amount was not actually paid to petitioner, it was paid by the ice plant to the creditor of petitioner. Therefore, in legal effect, it was paid to petitioner and the same should have been declared by it as part of its gross receipts or earnings subject to the franchise tax.

WHEREFORE, we find petitioner liable for the franchise tax in the sum of ₱295.15 (2% of ₱14,757.70), plus the surcharge of 25% for late payment in the sum of ₱73.79, or a total of ₱368.94. Accordingly, it is hereby ordered to pay the said sum of ₱368.94 within thirty (30) days from the date this decision becomes final, with costs.

SO ORDERED.

Manila, February 28, 1963.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge