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ERQUIAGA, INCORPORATED,
Petitioner,

- versus - April 12, 1962 C.T.A. CASE NO. 1115

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

DECISION

This is an appeal from the decision of the respondent Commissioner of Internal Revenue, dated May 5, 1961, declaring petitioner Erquiaga, Incorporated, subject to the payment of the graduated annual fixed tax on business (C-13) prescribed in Section 182 of the National Internal Revenue Code, and demanding from it the amount of ₱2,250.00 as annual fixed tax for the years 1951 to 1955, inclusive, plus a compromise penalty of ₱500.00, or a total amount of ₱2,750.00. (Annex IV, Petition for Review; See also pp. 12 & 43, BIR rec.)

The petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with its main office in Legaspi City, Albay. During the period from 1951 to 1955, the petitioner was engaged in the buying of copra in the Philippines, and exporting and selling it abroad. "It is an admitted fact that the petitioner never sold any copra within the Philippines.

It sold all its copra abroad." (P. 10, Memorandum for Respondent, pp. 47-57, CTA rec.; Par. 4, Petition for Review; Par. 8, Answer.)

For engaging "in the business of buying copra in the Philippines and selling them abroad", (Par. 8, Answer) the respondent assessed against and demanded from the petitioner the graduated annual fixed tax assessment under review. And inasmuch as the respondent denied petitioner's request for reconsideration of his decision on the disputed assessment, the latter appealed to this Court on July 12, 1961 by filing its petition for review.

On October 2, 1961, the petitioner filed a motion for summary judgment. On October 12, 1961, the respondent filed his opposition to said motion, and prayed that the said motion be denied and instead a judgment on the pleadings be rendered. And as prayed for by the respondent, this Court denied petitioner's motion for summary judgment and considered the instant case submitted for judgment on the pleadings.

Is a person or corporation which is engaged in the buying of copra in the Philippines, and exporting and selling it abroad, like the petitioner herein, subject to the graduated annual fixed tax on business (C-13) prescribed in Section 182 of the National Internal Revenue Code? That is the question to be decided in the present case.

The pertinent provisions of Section 182 of the National Internal Revenue Code, prior to their amendment by Republic Acts Nos. 1612 and 1856, read as follows:

> "Sec. 182. Fixed tax upon business.- Unless otherwise provided, every person engaging in a business on which the percentage tax is imposed shall pay in full a fixed annual tax of ten pesos for each calendar year or fraction thereof in which such person shall engage in said business.
>
> "Every person who is not required to pay the percentage tax prescribed in sections one hundred eighty-four, one hundred eighty-five and one hundred eighty-six shall pay in full for each calendar year or fraction thereof in which such person shall engage in business a fixed annual tax based upon his gross annual sales during the preceding calendar year, as follows:
>
> x x x x
>
> "Four hundred-fifty pesos, if the amount of the gross annual sales exceeds five hundred thousand pesos: x x x." (Underscoring supplied.)

The petitioner contends that the graduated annual fixed tax prescribed in Section 182 of the National Internal Revenue Code is to be levied, assessed and collected on the basis of the taxpayer's gross annual sales during the calendar year. Inasmuch as the respondent has admitted in his answer and memorandum that during the period in question, the petitioner never sold any copra within the Philippines, but was solely engaged in the business of buying copra in the Philippines and selling it abroad, the petitioner argues that in effect the respondent would be "converting the business tax provided for under Section 182 into an export tax which the legislature did not intend." (Pp. 5-7, Memorandum for Petitioner, pp. 32-40, CTA rec.) Therefore, the petitioner concludes, the collection of the disputed tax assessment which is the subject of the present appeal, is without authority of law.

On the other hand, the respondent contends that inasmuch as the "petitioner does not deny that during the years in question, it was regularly engaged in the activity of buying copra in the Philippines and exporting the same for sale abroad, amounting to more than ₱500,000.00 annually", and since said kind of business is "not subject to percentage tax, it is subject to the graduated fixed annual tax prescribed by Section 182 of the Tax Code." (Pp. 4-6, Memorandum for Respondent, pp. 47-57, CTA rec.)

We find the contention of the respondent to be in accordance with law, and held that the claim of the petitioner to be without merit. The tax which the respondent seeks to collect from the petitioner is a graduated annual "fixed tax upon business" as shown by the title of Section 182 of the National Internal Revenue Code. It is a business tax, or a "tax on business", as denominated by the title of the chapter of the National Internal Revenue Code under which said Section 182 is grouped under. (Collector of Internal Revenue vs. Manila

Lodge No. 761 of the Benevolent & Protective Order of Elks, G. R. No. L-11176, June 29, 1959; Collector of Internal Revenue vs. Sweeney, G. R. No. L-12178, Aug. 21, 1959). And pursuant to Section 178 of the same chapter of the same Code, a "privilege tax must be paid before any business x x x can be lawfully begun or pursued."

Note that under the provisions of the second paragraph of Section 182 of the National Internal Revenue Code which is quoted above - the authority relied upon by the respondent in demanding the payment of the questioned tax assessment - two requisites must be present before a graduated annual fixed tax on business can be collected, namely:

(1) The taxpayer is not required to pay the percentage sales tax prescribed in Sections 184, 185 and 186 of the National Internal Revenue Code; and

(2) The taxpayer must be engaged in business.

There is no question that the petitioner herein is not subject to the payment of the percentage sales tax prescribed in Sections 184, 185 and 186 of the National Internal Revenue Code. But-- did it engage in business in the Philippines during the period covered by the assessment?

The plain and ordinary meaning of "business" is restricted to activities or affairs where profit is the purpose, or livelihood is the motive. In other words, the term "business" refers to activities for profit or livelihood. (Collector of Internal Revenue vs. Manila Lodge No. 761 of the Benevolent & Protective Order of Elks, <u>supra</u>; Collector of Internal Revenue vs. Sweeney, <u>supra</u>.) Considering the facts of this case and the meaning of the term "business" as interpreted by the Supreme Court, we are of the opinion and so hold that the petitioner was engaged in business during the period under review.

As correctly stated by the respondent, "regular purchasing of copra is a business in which petitioner engaged in for the purpose of realizing profit or gain. The said activity is an essential part of petitioner's business of selling copra. Such activity benefited from the protection of the Philippine Government, and as such, it is subject to Philippine tax laws." (P. 5, Memorandum for Respondent, pp. 47-57, CTA rec.) Therefore, inasmuch as the business of the petitioner is not required to pay the percentage sales tax prescribed in Sections 184, 185 and 186 of the National Internal Revenue Code, it is subject to the payment of the graduated annual fixed tax on business pursuant to Section 182 of the same Code.

With regard to the contention of the petitioner that the respondent is in effect collecting from it an export tax since it merely purchased copra in the Philippines, and exported and sold the same abroad, it shall suffice to state that the graduated annual fixed tax on business in question was not levied and assessed upon the act of exporting the copra, but on the privilege to engage in business. (Li Seng Giap & Co. vs. Municipality of Daet, 54 Phil. 625.)

The complaint of the petitioner that the privilege tax assessed against and demanded from it was based on the value of its yearly exportations instead of its gross annual sales, is also without merit. "Since the records of petitioner's gross sales were not available," (Reply to Request for Admission, p. 20, CTA rec.) the respondent Commissioner of Internal Revenue was authorized by Section 15 of the National Internal Revenue Code to "assess the proper tax on the best evidence obtainable." Moreover, the petitioner herein has no reason whatsoever to complain as to the basis used in computing the tax, whether on the gross annual sales or the yearly exports, for it has never questioned the amount of the tax assessment.

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby affirmed, except with regard to the compromise penalty in the amount of ₱500.00, for it is clearly illegal and unauthorized for the Commissioner of Internal Revenue to arbitrarily impose such a penalty. (Collector of Internal Revenue vs. U.S.T., G. R. No. L-11274, Nov. 28, 1958; Collector of Internal Revenue vs. Bautista, G.R.

No. L-12250, May 27, 1959; Collector of Internal Revenue vs. Pio Barretto Sons, Inc., G. R. No. L-11805, May 31, 1960.)

Petitioner Erquiaga, Incorporated, is hereby ordered to pay the respondent Commissioner of Internal Revenue the sum of ₱2,250.00, as graduated annual fixed tax on business for the years 1951 to 1955, inclusive. With costs against the petitioner.

SO ORDERED.

Manila, April 12, 1962.

AUGUSTO M. LUCIANO
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge