REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JUAN YSMAEL & CO., INC.,
doing business under the
name and style of YSMAEL
STEEL MANUFACTURING CO.,
Petitioner,

- versus - C.T.A. CASE NO. 677

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from a decision of the respondent Commissioner of Internal Revenue holding that petitioner Juan Ysmael & Co., Inc., formed an unregistered partnership with Maximilian Zalevsky, Sr. and his son, Maximilian Zalevsky, Jr., "to put up a manufacturing enterprise" which is known under the name of Ysmael Steel Manufacturing Co., (Exh. 1, pp. 13-17, CTA rec.) and therefore, liable to corporate income tax, pursuant to Sections 24 and 84(b) of the Tax Code. The disputed income tax assessment under review is in the amount of ₱13,117.00 for the year 1951. (Exh. 3, p. 103, BIR rec.; See also Exh. 4, p. 194, BIR rec.)

It appears that sometime in May, 1951, petitioner Juan Ysmael & Co., Inc., represented by its President and General Manager, K. H. Hemady, as party of the first part, and Maximilian Zalevsky, Sr. and Maximilian Zalevsky, Jr., as party of the second part, entered into an agreement (Exh. 1, pp. 13-17, CTA rec.) to put up a manufacturing enterprise known as the Ysmael Steel Manufac-

92

turing Co. (See Exh. B, pp. 49-50, CTA rec.) According to their agreement, Juan Ysmael & Co., Inc., "shall furnish the necessary capital" while the Zalevskys "shall furnish the necessary technical knowledge and supervision, and shall devote their full and entire time to the said enterprise." They also agreed that the net profits to be derived from the manufacturing enterprise shall be distributed as follows: (1) 60% of the net profits to Juan Ysmael & Co., Inc.; and (2) 40% to the Zalevskys. In case of loss, the same shall also be divided in the same proportion as the net profits, i.e., Juan Ysmael & Co., Inc., shall bear 60% thereof and the Zalevskys shall shoulder 40% of the same.

On April 15, 1952, Ysmael Steel Manufacturing Co. filed its income tax return for the year 1951. It described itself as an <u>unregistered partnership</u> in the return which was signed, sworn to and subscribed before a Notary Public, by K. H. Hemady as president, and M. D. Zalevsky as general manager. (See pp. 3-6, BIR rec.) The said return reported a net income of ₱66,618.83, and on the basis of which, the respondent assessed the amount of ₱13,324.00 as corporate income tax for 1951. (See p. 10, BIR rec.)

Ysmael Steel Manufacturing Co. protested against the assessment on the ground that it is not liable for the payment of income tax pursuant to the letter of the Secretary of Finance, dated June 27, 1951 (see p. 17, BIR rec.), and on September 30, 1953, it filed the required bond pending the final determination of its income tax liability. (See pp. 15-16, BIR rec.)

On April 12, 1954, Ysmael Steel Manufacturing Co. protested against the same assessment of ₱13,324.00 based on the following reasons: "That Ysmael Steel Manufacturing Co. is an affiliate of Juan Ysmael & Co., Inc.; that the profits derived by Ysmael Steel Manufacturing Co. in the year 1951 were shared by Juan Ysmael & Co., Inc. and Mr. Maximilian Zalevsky, Sr. in the ratio of 60% and 40%, respectively; that the net income of Ysmael Steel Manufacturing Co. should have been assessed not as a separate entity but in consolidation with the income tax return of Juan Ysmael & Co., Inc. for the same period; and that Juan Ysmael & Co., Inc. reported the net income it derived from Ysmael Steel Manufacturing Co. for the year in question." In view of these alleged facts, Ysmael Steel Manufacturing Co. reiterated its plea that the protested assessment be reconsidered and set aside. (Pp. 31-32, BIR rec.)

On May 3, 1954, the respondent caused the reinvestigation of the income tax liability for the year 1951 of Ysmael Steel Manufacturing Co. (See p. 33, BIR rec.) As a result of the investigation, (See pp. 104-105, BIR rec.) the respondent, on January 15, 1957, reduced the assessment to ₱13,117.00 and demanded payment of the said amount. (p. 111, BIR rec.) The corresponding income tax assessment notice was also issued

94

by the respondent and served on Ysmael Steel Manufacturing Co. (Exh. 3, p. 103, BIR rec.)

On February 15, 1957, Ysmael Steel Manufacturing Co. requested for the reconsideration of the assessment. (Pp. 125-126, BIR rec.) However, this request for reconsideration was denied by the respondent in his letter dated April 2, 1957. (Exh. 2, p. 129, BIR rec.) On June 16, 1958, Ysmael Steel Manufacturing Co. reiterated its request for reconsideration of the assessment which request was also denied by the respondent in his letter of July 6, 1959. (Exh. 4, p. 194, BIR rec.) Hence, on July 9, 1959, the petitioner filed the present appeal with this Court.

The only issue to be resolved in this case is whether or not Ysmael Steel Manufacturing Co. is an unregistered partnership, and therefore subject to corporate income tax pursuant to Sections 24 and 84(b) of the National Internal Revenue Code.

The petitioner claims that Ysmael Steel Manufacturing Co. is a subsidiary of Juan Ysmael & Co., Inc., and that inasmuch as Juan Ysmael & Co., Inc. has already included in its income tax return the net income realized by Ysmael Steel Manufacturing Co. from its 1951 manufacturing operations, the respondent Commissioner of Internal Revenue erred in issuing the instant disputed assessment against Ysmael Steel Manufacturing Co. For clarification, we would like to state that in its amended 1951 income tax return, Juan Ysmael & Co. suffered a loss of

₱229,937.66. Hence, no income tax was paid on any amount received by it from the earnings of Ysmael Steel Manufacturing Co. On the other hand, the respondent contends that Ysmael Steel Manufacturing Co. is an unregistered partnership that came into existence by virtue of the contract, Exhibit 1, entered into by and between Juan Ysmael & Co., Inc. and Maximilian Zalevsky, Sr., and his son Maximilian Zalevsky, Jr., and therefore taxable for corporate income tax purposes.

We find the claim of the petitioner to be without merit and hereby sustain the contention of the respondent that Ysmael Steel Manufacturing Co. is an unregistered partnership subject to corporate income tax under Section 24 of the National Internal Revenue Code, in relation with Section 84(b) of the same Code.

Sections 24 and 84(b) of the National Internal Revenue Code provide in part as follows:

> "Sec. 24. Rate of tax on corporations.- There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (*compañias colectivas*), a tax upon such income equal to the sum of the following: x x x."
>
> "Sec. 84. Definitions.- When used in this Title -
>
> x x x x
>
> "(b) The term 'corporation' includes partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associa-

> tions or insurance companies, but does not include duly registered general co-partnerships (companias colectivas).

And Article 1767 of the New Civil Code reads as follows:

> "Art. 1767. By the contract of partnership two or more persons bind themselves, to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves."

The Supreme Court, interpreting and applying Article 1767 of the Civil Code of the Philippines said that "pursuant to this article, the essential elements of a partnership are two, namely: (a) an agreement to contribute money, property or industry to a common fund; and, (b) intent to divide the profits among the contracting parties." (Evangelista vs. Collector of Internal Revenue, G.R. No. L-9996, Oct. 15, 1957; 54 OG 996.)

In the case at bar, it is clear to our mind that these two elements are present. The parties to the agreement in question, Exhibit 1, (pp. 13-17, CTA rec.) in organizing Ysmael Steel Manufacturing Co., as a manufacturing enterprise, agreed to contribute to a common fund, petitioner Juan Ysmael & Co., Inc., to "furnish the necessary capital, as it sees fit, for the operation, maintenance, proper functioning of the said Company, and for the purchase of the necessary equipment or materials," and the Zalevskys, to contribute "the necessary technical knowledge and supervision" and agreeing further "to devote their full and entire time to the said enterprise." Hence, undoubtedly the first element is present in the instant case.

With regard to the second element, there can be no question that the same is also present in this case. The agreement expressly states in clear and unmistakable words the intention of dividing the profits among the contracting parties. Paragraphs 5 and 6 of said agreement provide as follows:

> "5. The net profits to be derived from this enterprise shall be distributed between the parties hereto as follows:
>
> "(a) Sixty per cent (60%) of the net profits shall accrue and belong to the PARTY OF THE FIRST PART; and
>
> "(b) Forty per cent (40%) shall accrue and belong to the PARTY OF THE SECOND PART.
>
> "6. The PARTY OF THE SECOND PART shall not receive any salaries. However, they shall be allowed a drawing account not exceeding Two Thousand Nine Hundred Pesos (₱2,900.00) monthly and all amounts so drawn by them, which is to be approved by the PARTY OF THE FIRST PART, shall be deducted from their share of the net profits stipulated in the preceding paragraph. For losses, if any, the PARTY OF THE SECOND PART, shall shoulder forty per cent (40%) of the same."

Moreover, we note that on April 15, 1952, Ysmael Steel Manufacturing Co., thru K. H. Hemady and M. D. Zalevsky, president and general manager respectively, filed its income tax return for the year 1951, wherein it described and stated the nature of the company as an unregistered partnership. (See pp. 3-6, BIR rec.) This statement of a relevant fact made by not only the responsible but the highest officials of the company,

98

constitutes an express admission which may be taken as evidence against it, (Sec. 7, Rule 123, Rules of Court) for the simple reason that it is fair to presume that it corresponds with the truth, and it is the fault of the company itself if it does not. (U.S. vs. Ching Po, 23 Phil. 578.)

Having arrived at the conclusion that the two essential elements of a partnership are present in the instant case, and having found that Ysmael Steel Manufacturing Co. has expressly admitted in its income tax return that it is such an unregistered partnership, we hold that said Ysmael Steel Manufacturing Co. is subject to the payment of the corporate income tax in question, pursuant to the provisions of Sections 24 and 84(b) of the National Internal Revenue Code. (Collector of Internal Revenue vs. Batangas Transp. Co., G.R. No. L-9692, Jan. 6, 1958; 54 OG 6724.)

WHEREFORE, in view of the foregoing considerations, the petition for review is hereby dismissed, and petitioner Juan Ysmael & Co., Inc., as one of the partners of the unregistered partnership known as Ysmael Steel Manufacturing Co., is hereby ordered to pay the Commissioner of Internal Revenue the sum of ₱13,117.00 within thirty (30) days from the date this decision becomes final, as deficiency income tax for the year 1951, without prejudice to whatever action it may take against Maximilian Zalevsky, Sr. and his son, Maximilian Zalevsky, Jr., for their corresponding share of the 1951

94

income tax payable by Ysmael Steel Manufacturing Co.

If any amount of the tax is not paid within the time prescribed above, there shall be collected a surcharge of 5% of the tax unpaid, plus interest at the rate of 1% a month from the date of delinquency to the date of payment, provided that the maximum amount that may be collected as interest shall not exceed the amount corresponding to a period of three (3) years. With costs against the petitioner.

SO ORDERED.

Manila, December 7, 1961.

AUGUSTO M. LUCIANO
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

100