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[G.R. No. L-6296. September 29, 1956]

CU UNJIENG SONS, INC., PETITIONER, VS. THE BOARD OF TAX APPEALS AND THE COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

CONCEPCION, J.:

This is an appeal, taken by Cu Unjieng Sons, Inc., from a decision of the Board of Tax Appeals, now Court of Tax Appeals, dismissing the former's petition for review of a decision of the Collector of Internal Revenue, finding said corporation liable for the sum of P33,490.76, as deficiency income taxes for the years 1946 and 1947, plus the corresponding 5% surcharge and 1% monthly interest thereon, and affirming said decision, without costs.

The case was submitted to said Board of Tax Appeals upon a stipulation of facts, the pertinent part of which is:

> "1. That the petitioner is a corporation duly organized and existing under the laws of the Philippines, with its principal office at 310 Dasmarinas, Manila, and that more than 70% of the capital stock of which is owned by Filipino citizens;
>
> "2. That the respondent is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippines;
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> "3. That on February 29, 1948, the petitioner filed with the Philippine War Damage Commission a claim for compensation in accordance with the provisions of Philippine Rehabilitation Act of 1945, for losses sustained during the battle of liberation of Manila and other parts of the Philippines, in the total stun of Pl,079,388.05, representing the appraised value of the properties lost;

"4. That on June 15, 1950, the Philippine War Damage Commission notified the petitioner that only the sum of P671,770.19 was approved by the said Commission and that of this amount the sum of P470,239.13 will be paid;

"5. That on June 15, 1950, the Philippine War Damage Commission transmitted to the petitioner U.S. Treasury Warrant No. 1382483 for the sum of P202,531.06 as partial payment of the approved claim of the petitioner;

"6. That on November 8, 1950, the Philippine War Damage Commission transmitted a second United States Treasury Warrant No. 1471286 for the sum of P151,148.31 together with a notice to the petitioner that the said amount of fl51,148.31 would be the last payment to be made by the Commission covering the claim of the petitioner, unless the United States Congress makes further appropriation therefor.

"8. That the petitioner filed its income tax returns for the years 1945, 1946, 1947, 1948, 1949 and 1950, copies of which are marked Exhibits 'A', 'B', 'C', 'D', 'E' and 'F', respectively;

"9. That the petitioner paid no income tax for the years 1945 and 1946, but it paid to the respondent the following sums:

1947	P2,483.32
1948	51,150.14
1949	69,925.87
1950	47,243.00

"10. That according to the returns filed by the petitioner, it deducted the following war losses for the years set forth below:

1945	P22,492.50
1945	P22,492.50
1946	37,875.00

1947 ..... 194,315.25

"11. That the petitioner claimed no further war losses for any of the returns filed by it for the years 1948 and 1950, inclusive;

"12. That the respondent disallowed the deductions for war losses claimed by the petitioner for the years 1946 and 1947 on the ground that all the war losses sustained by the petitioner should have been claimed as deduction for the year 1945 when the said losses were actually sustained, pursuant to Section 30(d) (2) of the National Internal Revenue Code;

"13. That by reason of the said disallowance by the respondent, the latter sent assessment notices dated April 11, 1949 and March 10, 1949 to the petitioner demanding the payment of the sums of P9,540.88 and P23,949.88 as deficiency income taxes for the years 1946 and. 1947, respectively;

"14. That the war damage loss in the amount of P329,682.75 was allowed by the respondent and as per investigation, it was allowed as a deductible item in 1945, in accordance with Section 30 (d) (2) of the National Internal Revenue Code."

Briefly stated, the issue is whether the losses, aggregating Pl,079,388.05, admittedly suffered by Cu Unjieng Sons, lac, during the battle for the liberation of Manila and other parts of the Philippines in 1945, were deductible, for income tax purposes, m 1945, when the losses were physically sustained, or in 1950, when petitioner was advised by the Philippine War Damage Commission that no payments, other than those effected by said Commission in June and November, 1950, would be made for said losses. The determination of this question hinges on the interpretation and construction of section 30 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, from which we quote:

"*Deductions from gross income*.—In computing net income there shall be allowed as deductions—

* * * * * *

"(d) Losses:

* * * * * *

"(2) *By corporations*.—In the case of a corporation, all *losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise,*" (National Internal Revenue Code or C. A. No. 466.) (Italic supplied.)

This legal provision is implemented by Revenue Regulations No. 2, otherwise known as Income Tax Regulations, issued by the Secretary of Finance, pursuant to Sections 4(1) and 388 of said Commonwealth Act No. 466. Sections 94 and 96 of the aforementioned regulations read:

"Sec. 94. *Losses by corporations.*—Domestic corporations may deduct losses actually sustained and charged off within the year and not compensated for by insurance or otherwise.

* * * * * *

"Sec. 96. *Losses generally.*—Losses must usually be evidenced by closed and completed transactions. Moreover, the amount of loss must be reduced by the amount of any insurance or other compensation received, and by the salvage value, if any, of the property * * *."

It is not disputed that the losses in question could only be charged off in the income tax return for the year 1945, unless compensated for "by insurance or otherwise." Petitioner maintains that said losses were so compensated for "by insurance or otherwise"; that the said losses were not evidenced by "closed or completed transaction," until notice by the Philippine War Damage Commission that further compensation therefor would not be, forthcoming; and that, inasmuch as such notice was given in 1950, it follows that the losses in question were not chargeable as deductions in the year 1945. The Collector of Internal Revenue and the Board of Tax Appeals held, however, that the said losses were

not compensated for by insurance or otherwise, and that, accordingly, the corresponding deduction was permissible, in 1945, only, not in any other year.

The first question for resolution by this Court is whether the losses aforementioned were "compensated for by insurance" in 1945. Petitioner maintains the affirmative view, relying upon section 5(g) of an Act of Congress of the United States of March 27, 1942, otherwise known as Public Law 50j6—77th Congress of the United States— subsections (a) and (6) of which 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; * * *
>
> *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 to 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*, * * * 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 authorization and limitations prescribed in subsection (a), *any loss or damage to any such property sustained subsequent " 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.) (Italics supplied.)

It will be noted that subsection (a) of said section 5(g), authorized the Reconstruction Finance Corporation to em-power the War Damage Corporation "to use its funds to provide, through insurance, reinsurance or otherwise, reasonable protection against loss of, or damage to, property which may result from enemy attack"; and that "such protection shall be made available * * * *upon payment of such premiums or other charge* * * * as the War Damage Commission * * * may establish."

Pursuant to subsection (*b*) of said section 5(*g*), "any loss or damage to any such property" referred to in sub-section (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 quoted War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge."

Thus, the above quoted subsections of said Public Law 506—77th Congress of the United States, grant the benefits of the protection therein provided for in two cases, namely: (1) protection "*through insurance*, reinsurance or otherwise", which protection "shall be made available * * * *upon the payment of such premium or other* charge * * * as the War Damage Corporation * * * may establish"; and (2) protection "without requiring a contract

of insurance or the payment of premium or other charge." In order to come under subsection (a), there must be (1) "insurance, reinsurance or otherwise" and (2) "payment of such premium or other charge * * * as the War Damage Corporation * * * may establish." Admittedly, neither requirement is present in the case at bar. Hence, petitioner is not entitled to the benefits of said subsection (a).

It claims, however, to be within the purview of subsection (b), but the same is applicable only to losses or damages "sustained subsequent to December 6, 1941, *and prior to the date determined by the Secretary of Commerce under subsection* (a), "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, *which shall not be later than July 1, 1942" Having been sustained in 1945, or "later than July 1, 1942,"* it follows that the losses of petitioner herein are not, and cannot be, covered by the provisions of the aforementioned subsection (*b*) of section 5(*g*).

This is borne out by the records of the hearings before the Committee on Territories and Insular Affairs of the Senate of the United States, on the bill which later became the Philippine Rehabilitation Act of 1946, Speaking before said Committee, John Goodloe, General Counsel for the War Damage Corporation said:

> "Mr. GOODLOE. Further, in the opinion of counsel for the KFC and for the War Damage Corporation, the United States Government and War Damage Corporation are morally committed to the payment of war *damages that occurred in the Philippine Islands after December 6, 1941, and prior to July 1, 1942*, to the extent of reasonable protection for all such damages, but not in excess of approximately $99,000,000 which represents the limitation of $100,000,000 stated in the press release of December 13, 1941, less disbursements made and hereafter to be made on account of war *damages which occurred between December 6, 1941 and July 1, 1942* in the United States and its Territories and possession, exclusive of the Virgin Islands." (Italics supplied.)

Summarizing the view of Mr. Goodloe, the Chairman of the Committee used the following language:

"The CHAIRMAN. Let me recapitulate what you have said for the benefit of those who have just come in.

"We are not legally bound to pay any damages to the Philippine Island inhabitants for war damages in the opinion of the War Damage Corporation.

"We are morally bound because of certain press release to pay damages up to $100,000,000 for damages inflicted after December 6, 1941, and prior to July 1, 1942" (Italics supplied.)

Our Resident Commissioner to the United States concurred in said view. We quote from a statement submitted by him to said Committee on October 30, 1945:

"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, 194l 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 authorization 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, 194l 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.

* * * * * *

"Summarizing, it is submitted—

"1. That property losses in the Philippines sustained through enemy attack subsequently 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;

"2. That *property tosses in the Philippines sustained subsequent to July 1, 1942, cannot come under the insurance protection provided by the act of March 27, 1942,* because of loss of control of the Philippines by the United States, making it impractical for effecting insurance coverage on such properties;

"3. That *the need for providing later for such properties destroyed after July, 1942, was recognized by Congress."* (Italics supplied.)

Petitioner insist that its property were, in effect, covered by a "special statutory insurance", regardless of any legislation thereon, because: (1) on December 13, 1941, the Federal Loan Agency of the United States announced,[1] with the approval of the President ,of the United States, that the Rehabilitation Finance Corporation had created the War Insurance Corporation (later War Damage Corporation) with a capital of 100,000,000, to provide protection against losses *resulting from enemy attack* which might be sustained by owners of property in continental United States; (2) on December 23, 1941, said Agency further announced [2] that the War Insurance Corporation would extend the same protection to property owners in the Philippines; (3) these announcements were published in the Manila Daily Bulletin on December 29, 1941[3] and were subsequently confirmed in radio broadcasts of the "Voice of America"; (4) Jesse Jones, the Federal Loan Administrator of the United States declared that said announcements were intended as insurance policy; and (5) compliance therewith, according to Senator Millard Tydings, was a "legal obligation" on the part of the United States.

Petitioner admits (p. 14 of its brief), however, that "to fulfill the commitments made in the aforementioned announcements," the 77th Congress of the United States passed said Public Law No. 506, which, as above stated, does not cover losses sustained "later than

July 1, 1942". Moreover, said announcements admittedly specified that protection would be given "against lost due to *enemy attack*."[4] Accordingly, section 5g of said Act of Congress provided, in subsections (a) and (b) thereof, for "protection against loss or damage to property * * * which may result from *enemy attack* (including any action taken by military, naval or air forces of United States in resisting *enemy attack*) ,[4]

Petitioner herein suffered its aforementioned losses in 1945, during the battle for the liberation of the Philippines by the Allied, especially American Forces. Those losses were not the result of *enemy attack*, or of action by the armed forces of the United States in resisting enemy attack. The main enemy, in this theater of War, was Japan, and neither Japan, nor any of its associates in the facist Axis, was then attacking in the Philippines. On the contrary the members of the Axis were, early in 1945 and subsequently thereto, *in the defensive* in all frents, including the Philippines. They were desperately and hopelessly resisting the relentless *attacks of the allied democratic powers,* particularly, in these Islands, the American forces of liberation. In the words of the *amici curiae* "the properties of the petitioners herein * * * were destroyed or damaged as a result of military action *by the armed forces of the United States* * * *." (pages 47-48, *amici curiae's brief*.) Events subsequent to the approval of said Act of Congress of March 27, 1942, particularly the language of the Philippine Rehabilitation Act of 1946, which will presently be discussed, leave no reason for doubt that said term "enemy attack" was used in its common, ordinary meaning, as distinguished from other causes of losses or damage to property.

It is clear, therefor, that petitioner's losses do not come within the purview either of said Act of Congress of United States of March 27, 1942, or of the announcements above mentioned, and are not compensated for by "insurance," as the term is used in our National Internal Revenue Code.

It is alleged, however that said losses could not be deducted in 1945, because they were "compensated for * * * otherwise" than by insurance, within the purview of section 30 of said Code and section 94 of our Income Tax Regulations. In support of this contention, petitioner invokes the Act of Congress of the United States of April 30, 1946, otherwise known as the Philippine Rehabilitation Act of.1946, (Public Law 370—79th Congress), section 102 (a) of which provides:

> "The Commission is hereby authorized to make compensation to the extent hereinafter provided on account of physical loss or destruction of or damage

to property in the Philippines occurring after December 7, 1941 (Philippine time), and before October 1, 1945, as a result of one or more of the following perils: (1) Enemy attack; (2) action taken by or at the request of the military, naval, or air forces of the United States to prevent such property from coming1 into the possession of the enemy; (3) action taken by enemy representatives, civil or military, or by the representatives of any government cooperating with the enemy; (4) action by the armed forces of the United States or other forces cooperating with the armed forces of the United States in opposing, resisting or expelling the enemy from the Philippines; (5) looting, pillage, or other lawlessness or disorder accompanying the collapse of civil authority determined by the Commission to have resulted from any of the other perils enumerated in this section or from control by enemy forces: *Provided,* That such compensation shall be payable only to qualified persons having, on December 7, 1941 (Philippine time), and continuously to and including the time of loss or damage, an insurable interest as owner, mortgagee lien holder, or pledgee in such property so lost or damaged: *Provided, further,* That any qualified person who acquired any deceased person's interest in any property either (1) as heir, devisee, legatee, or distributee, or (2) as executor or administrator of the estate of any such deceased person for the benefit of one or more heirs, devisees, legatees, or distributees, all of whom are qualified persons, shall be deemed to have had the same interest in such property during such deceased person's lifetime that such deceased person had: *Provided, further,* , That no claim shall be approved in an aggregate amounts which exceeds whichever of the following amounts, as determined by the Commission, is less: (a) The actual cash value, at the time of loss, of property lost or destroyed and the amount of the actual damage to other property of the claimant which was damaged as a direct result of the causes enumerated in this section; (b) the cost of repairing or rebuilding such lost or damaged property, or replacing the same with other property of like or similar quality: *Provided, further,* , That in case the aggregate amount of the claims which would be payable to any one claimant under the foregoing provisions exceeds $500, the aggregate amount of the claims approved in favor of such claimant shall be reduced by 25 per centum of the excess over $500,"

As above stated, this law was approved, and became effective, on *April 30, 1946*. 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.* Consequently, the approval of the Philippine Rehabilitation Act of 1946 did not constitute in 1945 a compensation "*otherwise*" than by insurance, and did not authorize petitioner herein to postpone, to another year, its claim for deduction arising from the war losses in question.

This notwithstanding, petitioner insists that said losses were "compensated for * * * otherwise" than by insurance *before the end of 1945,* on account of the following events: (1) in October 1943, President Roosevelt recommended to the Congress of the United States that provision be made for the physical and economic rehabilitation of the Philippines made necessary by the ravages of war; (2) an Act of Congress of the United States, approved on June 29, 1944, created a Philippine Rehabilitation Commission to investigate all matters affecting the rehabilitation of the Philippines, including damages to public and private property; (3) in January, 1945, the Japanese were already impotent to check the advance of the American forces of liberation in the Philippines; (4) on February 27, 1945, General MacArthur stated that destroyed or damaged properties had to be either rehabilitated or indemnified; (5) upon his return to the Philippines from a trip to the United States, in May 23, 1945, President Osmeña declared that President Truman had pledged to carry out everything President Roosevelt had promised to be done for the Philippines; (6) on June 8, 1945, Senator Tydings, reported to the Senate of the United States on the huge task of repairing the widespread devastation visited by war upon our soil; (7) soon thereafter, that same year, the War Damage Corporation sent to the Philippines a special mission to survey the war damage therein and to make appropriate reports and recommendations for such actions as may be necessary and desirable in regard to any program of compensation under the Act of Congress of March 27, 1942; (8) based upon the report thus submitted, the corresponding bill was introduced in the Senate of the United States, which passed it on December 5, 1945; (9) said bill was approved by the House of Represantatives of the United States on April 11, 1946; and (10) on April 30, 1946, President Truman signed the bill, which thus became the Philippine Rehabilitation Act of 1946.

In other words,. it is claimed that the acts and declarations of responsible officials and organs of the Government of the United States before the end of 1945 were such as to constitute "conclusive assurances that property owners had reasonable expectation, that their war losses would be compensated for." This "reasonable expectation", it is said, sufficed to place the losses of herein petitioner, during 1945, within the purview of the phrase "compensated for * * * otherwise" than by insurance in section 30 of our National

Internal Revenue Code.

Upon careful consideration of the reasons adduced, and the authorities cited, by counsel for the petitioner and the *amici curiae* to bolster up this contention, we find that same is untenable. In general, the word "otherwise" means but for, or under other circumstances (Shepherd *vs*. Davis, 110 A, 17, 19, 91, N. J. Eq. 468, 30 W & P 496) ; in a different manner; in another way, or in other ways (Safe Deposit & Trust Co. of Baltimore *vs*. New York Life Insurance Co., D.C. Md., 14 F Supp. 721, 726). However, when said term is immediately preceded by an enumeration, it should receive an *ejusdem generis* interpretation, or be limited in its application by the rule nosotur a socus. In this connection, words and phrases uses the following language:

> "Under the 'ejusdem generis' rule, a 'clean-up' phrase, such as the term 'otherwise' with respect to a classification which immediately precedes it, includes only *things of a like or similar kind*, and nothing of a higher class than that which it immediately follows. Hodgson *vs*. Mountain & Gulf Oil Co., D. C. Wyo. 297 F. 269, 272.
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> "'Otherwise,' as used in Rev. St. sec. 811, denouncing punishment against whoever shall be found guilty of attempting to rob from the person by cutting or tearing the clothes, or thrusting the hand into the pockets, or 'otherwise,' is intended to include all *similar* acts to those specified, resorted to in an attempt to rob. State *vs*. West, 30 So. 848, 106 La. 274.
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> * * * * * *
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> The words or 'otherwise' in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a *restricted sense,* as referring to such other matters as are *kindred to the classes before mentioned*, receiving an ejusdem generis interpretation. New York Life Ins. Co. *vs*. McDearmon, 114 S. W. 57, 59, 133 Mo. App. 671; Fleming *vs*. City of Rome, 61, S. E. 5, 6, 130 Ga. 383." (30 Words & Phrases, pp. 495, 496; italics

supplied.).

> "The word 'otherwise' in provision of Revenue Act for allowance of losses, sustained by corporation during taxable year and not compensated for by insurance or otherwise, as deductions in computing its net income, must be construed as *limited in application by rule nosdtur a sociis.* Revenue Act 1928, sec. 23(*f*) 26 U.S.C.A. Sec. 23(*l*). Comar Oil Co. *vs.* Helvering, CCA. 8, 107 F. 2d 709, 711." (30 Words & Phrases, 1955 Cumulative Annual Pocket Part, p. 124; italics supplied.)

In other words, the vocable "otherwise" in the clause "compensated for by insurance or otherwise" (in section 30 of our National Internal Revenue Code) should be construed to refer to compensation due under a title *analogous or similar to insurance.* Inasmuch as the latter is a contract establishing a legal obligation (Sec. 2, Art. No. 2427), it follows that in order to be deemed "compensated for * * * otherwise", the losses sustained by a tax payer must be covered by a judicially enforceable *right,* springing from any of the juridical sources of obligations, namely: law, contract, quasicon tract, torts or crime (Art. 1157, Civil Code of the Philippines; Art. 1089, Civil Code of Spain). Hence, Mertens, in his work on the "Law of Federal Income Taxation" (Vol. 5, p. 104), states:

> "* * * The term 'or otherwise' is broad enough to cover any form of off-setting benefit as well as actual recoupment. However, there must be a measurable right to compensation for the loss with ultimate collection reasonably clear." (Italics supplied.)

Thus, deduction may not be claimed when the taxpayer is indemnified against loss by a third party's guaranty (Dunne *vs*. Commissioner of Internal Revenue, 75 F. 2d 255; Lewellyn *vs*. Electric Reduction Co., 275 U.S. 243) or by an insurance policy (Allied Turriers Corporation *vs*. Commissioner, 24 BTA 457; Harwick *vs*. Commissioner, TC Memo, October 4, 1949 aff'd 184 F. 2d 825; the case of Rose Licht, 37 BTA 1096); or when the guilty party is bound to indemnify said loss, it being the result of a breach of contract (Foley et al. *vs*. Commissioner of Internal Revenue, 94 JF. 2d 958; Lucas *vs*. American Code Co., 280 U. S. 445; Louisville Trust Co. *vs*. Glen. 33 F. Supp. 403, aff'd 124 F. 2d 418; Bernard Schulenklooper, T. C. Memo. Par. 47203, P. k.); or when the damages resulting from one phase of a given transaction are offset by the benefits derived from another

phase of the same transaction (Taylor *vs*. MacLaughlin, 30 F. Supp. 19). In these cases, there was a legal right to be indemnified and, hence, compensated.

Even, however, if there were such right, the loss would be deductible in the year in which it took place materially, when the possibility of recovery is remote (E. R, Hawks, 35 BTA 784). For this reason, it was held in Commissioner of Internal Revenue *vs*. Thalcher & Son, 76 F. 2d 900 (CCA 2nd, 1935) that a general contractor's claim against a defaulting subcontractor for damages was too contingent and uncertain to the regarded as compensated for in the year in which the default took place. Similarly, in U. S. *vs*. White Dental Manufacturing Co. (274 U. S. 398, 71 L. ed. 1120, 47 S. Ct. 598), the losses sustained by a Pennsylvania Corporation, on account of the mismanagement of its properties, in Berlin, by the German Government, which seized those properties in March, 1918, were deductible from the gross income in that year. In this connection, we should bear in mind that the rules of international law expressly forbid the confiscation of private property owned by an enemy(see Arts. 46 and 47 of the Hague Regulations; Haw Pia *vs*. China Banking Corporation, 80 Phil., 604), and that, accordingly the latter was legally entitled to compensation for said losses. This fact did not bar, however, the deduction thereof from the gross income of the taxpayer, the possibility of collecting said compensation being dependent upon the hazards of the war then in progress. *At any rate, there has never been any case in which the words "or otherwise", in the income tax law, have been held to include the hope, or even the moral certainty, that a proposed legislation— authorizing payment of an indemnity, not due, either under the general principles of law, or under any particular statute—would eventually be approved.*

Upon the other hand, "compensation shall take place"— according to articles 1278 of the Civil Code of the Philippines—"when two persons, in their own *right,* are *creditors and debtors* of each other." (See, also, Art. 1195 of the Civil Code of Spain). This reciprocal "right", between "creditors and debtors", connotes, necessarily, juridical relations productive of *legal obligations,* which did not exist between the United States and the herein petitioner in 1945.

The amid curiae invokes the case of Mine Hill & Schul-kill Haven R. Co. *vs*. Smith (184 F. 2d. 422), in which it was held that:

> "* * * determination of the year of loss calls for 'a practical, not a legal, test' and requires a consideration of all pertinent facts and circumstances, regardless of

> their objective or subjective nature; the standard for determining the year for the deduction of a loss 'is a flexible one, varying according to the circumstances of each case'; the taxpayer's conduct and attitude are to be considered but they are not decisive; the taxpayer has the burden of establishing: that a claimed deductible loss was sustained in the taxable year; the question as to the year when the loss was sustained is purely one of fact ** ." 184 F. 2d 422, 426.)

Said decision is not in point. It refers to the time at which a given loss should be deemed sustained *as a matter of fact* The issue therein was whether the losses in certain railroad branch lines, which had not been used for a number of years prior to 1942, should be deemed sustained in 1942 and 1943, when said lines were torn up by authority of the Interstate Commerce Commission, as claimed by the taxpayer. The district court decided the question in the negative, following the theory of the Collector of Internal Revenue to the effect that said lines had suffered material deterioration before 1942. Such decision was affirmed by the United States Court of Appeals (Third Circuit). In the case at bar, it is admitted that petitioner's property were physically lost or damaged in 1945. The issue is whether said losses were then "compensated for by insurance or otherwise"—which is a question both of law and fact, although more of law.

It is not contended that indemnity was due to petitioner herein by reason of tort, crime or quasi-contract. Upon the other hand, petitioner had, in 1945, no right to indemnity springing from law, for the Philippine Rehabilitation Act was not approved until April, 1946. Then again, the press releases and announcements already adverted to created neither a legal obligation nor a contractual one, either express or implied. They were mere expressions of a policy of the *Executive Department* of the United States. They implied no intent to vest, and did not vest, in the owners of property damaged or destroyed in the Philippines during the war, a legal right to demand indemnity from the United States.

> "Announcement of an official governmental policy by President of the United States does not give rise to a contract in and of itself, for announcement of policy does no more than authorize appropriate government agency to enter into a contract consistent with policy." (Reconstruction Finance Corp. *v.* MacArthur Mining Go., Inc., No. 14121, United States Court of Appeals, Eight Circuit, Nov. 6, 1950 [syllabus], 184 F. 2d 913.)

Moreover, the payment of indemnity by the United States necessarily required an appropriation of public funds which could be made only by an act of Congress of the United States, and, as regards war losses or damages sustained in the Philippines "later than July 1, 1942" (like those of petitioner herein), no such appropriation law existed at the close of 1945 or before. The theory to the effect that an implied contract resulted from the announcement of said policy becomes clearly devoid of merit when we bear in mind that the President of the United States could have validly (though, perhaps, not wisely) changed said policy, without violating either the due process clause or the constitutional provision against impairment of contractual obligations.

The accuracy of this self-evident propositions is impliedly admitted in petitioner's brief. Thus, in an effort to distinguish the case at bar from that of U. S. *vs*. White Dental Manufacturing Co., (*supra*,) cited in the decision of the Board of Tax Appeals, petitioner stresses the fact that "the obligation to pay * * * compensation for war losses sustained by the petitioner during the war *was expressly provided by law*" (referring evidently to the Philippine Rehabilitation Act of 1946), and that no such legislation existed in the case of the White Dental Manufacturing Co. This is an implicit, but, clear, acknowledgment of the fact that *petitioner's right to indemnity for its war losses accrued upon the approval of said Act of Congress* of the United States. In short, such right did not exist, in legal contemplation, during the year 1945. In fact, petitioner says that its right to compensation "was created by law" and entered into the statute book" (p. 39, Petitioner's Brief). Hence, it could have no legal recognition, much less any juridical effect, prior to April 30,1946, when said legislation was approved and became effective.

Thus, in the aforementioned hearings before the Committee on Territories and Insular Affairs of the Senate of the United States, counsel for the War Damage Corporation expressed the following view:

> "In the opinion of Counsel for the Reconstruction Finance Corporation and War Damage Corporation *neither the United States Government nor the War Damage Corporation is legally committed* to make payment on account of war damages in the Philippine Islands either by reason of the press release of December 22, 1941, or the Act of March 27, 1942.
>
> "In our opinion, the United States Government and War Damage Corporation are morally committed to the payment of war damages that occurred in the

> Philippine Island after December 6, 1941, and before July 1, 1942, to the extent of reasonable protection' for all such damages, but not in excess of approximately $99,000,000, which represents the limitation of P100,000,000 stated in the press release of December 13, 1941, less disbursements made and hereafter to be made on account of war damage which occurred between December 6, 1941, and July 1, 1942, in the United States or its territories and possessions, exclusive of the Philippine Islands.
>
> * * * * * * *
>
> "*In mir opinion, we are not legally or morally committed* to pay for war damages which occurred in the Philippine Islands before December 6, 1941, or after July 1, 1942."

The feeling that the United States had no legal obligation to indemnify war losses like those sustained by herein petitioner was such that, speaking before the same Committee, as member of the Philippine Rehabilitation Commission, Tomas L. Cabili, said:

> "I was more impressed by the fact that while it is claimed *that there is no legal obligation* on the part of the United States to compensate the Philippines for the destruction caused by this war, yet it is recognized that a moral obligation exists. To me *moral* obligations are more binding, as legal obligations might be circumvented. It is to the great credit of the American people that they should approach this problem from the moral standpoint."

Needless to say, the Government of the United States was under no legal obligation to pay indemnity for losses caused by the enemy in the Philippines. Neither was it. liable for damages caused by the American forces during its war operations therein, in conformity with the laws and customs of war. (U. S. *vs*. Caltex [Philippines], Inc., et al., 97 L. ed. 157; U. S. *vs*. Pacific R. Co., 120 U. S. 227; Juragua Iron Co. *vs*. U. S., 212 U. S. 297). Consequently, 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.

Evidently, petitioner shared this view in 1945, 1946 and 1947, for its conduct during those years clearly indicates that it did not believe its war losses in 1945 were then "compensated for by insurance or otherwise". This is borne out by the fact that it deducted part of said losses (P22,492.50) from its gross income of P56,430.21 in 1945.5 In other words, it thus regarded its war losses as closed and completed transactions during the year 1945. It likewise, charged off said losses, partly (P37,875.O0) in 1946 (when its gross income amounted to P129,778.20)[6] and partly (P194,315.25) in 1947 (when its gross income amounted to P324,512.50) [7] Thus petitioner, in effect, represented to the Government that it did not consider the question relative to its war losses as having been left open, in 1945, by the statements of officers of the Government of the United States, above referred to, by the introduction of the bill which later on became the Philippine Rehabilitation Act of 1946, and by the approval thereof, and that said question was closed prior to receipt of the aforementioned notice of the Philippine War Damage Commission in November, 1950. In fact, [8] petitioner did not include in his income tax return for 1950 any deduction for war losses, although the same were not fully covered by the indemnity paid by said Commission. Consequently, petitioner is now estopped from maintaining that said war losses were "compensated for by insurance or otherwise" in 1945.

Wherefore, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

Paras, C. J., Padilla, Bautista Angelo, Babrador, Endencia, and *Felix, JJ,,* concur.

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[1] The announcement was made in the form of the following press release:

"Federal Loan Agency
Washington, December 13, 1941.

Jesse Jones, Federal Loan Administrator, announced today that, with the approval of the President, the Reconstruction Finance Corporation has created the War Insurance Corporation, with a capital of $100,000,000, to provide reasonable protection against losses *resulting from enemy attacks* which may be sustained by owners of property in continental United States through damage to, or destruction of buildings, structures, and personal property, including goods, growing crops, and orchards.

Pending completion of details, any such losses will be protected from December 13, 1941, up to a total of 1100,000,000

Accounts, bills, currency, debts, evidences of debt, money, notes, securities, paintings, and other objects of art will not be covered.

For the time being, no premium will be charged for this protection, and no declaration or reports required, unless there is a loss.

Other terms and conditions for such protection will be announced as established. No protection will be available to owners of property who, in the opinion of the President, are unfriendly to the United States." (Italics supplied.)

[2] The press release thereon reads:

'Federal Loan Agency
Washington, *December 22, 1941*

Jesse Jones, Federal Loan Administrator, today announced that, with the approval of the President, the War Insurance Corporation, created by Reconstruction Finance Corporation with a capital of $100,000,000, will extend the *same protection* to property owners in Alaska, Hawaii, *the Philippine Islands*, Puerto Rico, and the Virgen Islands, as it does to property owners in continental United States.

As previously announced, the War Insurance Corporation will provide reasonable protection against losses *resulting from enemy attacks* which may be sustained by such property owners through damage to, or destruction of, buildings, structures, and personal property, including goods, growing crops, and orchards.

Accounts, bills, currency, debts, evidences of debt, money, notes, securities, paintings, and other objects of art will not be covered.

When the plans has been fully worked out, it is expected that a premium may be charged for coverage of losses in excess of some stated amount. In the meantime no application or report will be required unless there is a loss.

Other terms and conditions for such protection will be announced as they are established. No protection will be available to owners of property who, in the opinion of the President, are unfriendly to the United States." (Italics supplied.)

[3] The pertinent part of said news item says:

> "In a recent cable to Malacanan, Resident Cmmissioner J. M. Elizalde reported that the plan will provide protection against losses *from enemy attacks* which may be sustained by property owners through damage to or destruction of buildings, structures and personal property, including goods, growing crops or orchards."
> (Italics supplied.)

[4] "On December 13, 1941, the Federal Loan Agency of the United States announced, with the approval of the President of the United States, that the Reconstruction Finance Corporation created the War Insurance Corporation (later War Damage Corporation) with a capital of P100,000,000 to provide protection against losses *resulting from enemy attack* * * * . (See Congressional Record, Vol. 88, part 1, pages 965-968.)" (See p. 13, petitioner's brief; Italics supplied.)

> "In explaining the reason why the United States Government proposed to underwrite such property against loss due to enemy attack, the Senate Committee on Banking and Currency in its explanatory note dated February 2, 1942 stated:
>
> > 'Due to the widespread fear of bombing * * * it was felt * * * that assurance be given *that 'property owners would be given reasonable protection from losses due to enemy attack, since that protection could not be obtained from private insurance companies.'* (Italics supplied." (Page 15, petitioner's brief.)
>
> "From the foregoing provisions of the Act of Congress of the United States of March 27, 1942, it is clear that property in the Philippines was given insurance protection by the United States against loss or damage *resulting from enemy attack* including action taken by the United States in resisting enemy attack." (Italics supplied; p. 16, petitioner's brief.)

[5] So that. the gross became more than offset by said portion of the war losses (P22,492.50), plus the reported general expenses (P24.383.01), depreciation (P4,468.00), interest paid (P2,171.69) and taxes (P4.080.54), thus giving an aggregate deduction of P57.595.74.

[6] Which was, also, more than offset by said claim for war losses (P37,875.00), plus general expenses (P65,895.50), depreciation (P4,468.00), interest paid (P15,629.28) and taxes (P6,115.83), thus giving an aggregate deduction of P129,947.61.

[7] Which was almost completely wiped out by the aforesaid claim for war losses (P194,315.25), plus general expenses (P52,426.81), depreciation (P14,579.82), interest paid (P22,819.24) and taxes (P19,677.09), giving a total deduction of P303,818.21.

[8] Contrary to its contention, in the case at bar, to the effect that said losses became closed and completed transactions upon receipt only of said notice.

Date created: October 10, 2014