

TAN TIONG BIO, ET AL., PETITIONERS, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-15778. April 23, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On October 19, 1946, the Central Syndicate, a corporation organized under the laws of the Philippines, thru its General Manager, David Sycip, sent a letter to the Collector of Internal Revenue advising the latter that it purchased from Dee Hong Lue the entire stock of surplus properties which the said Dee Hong Lue had bought from the Foreign Liquidation Commission and that as it assumed Dee Hong Lue's obligation to pay the 3-1/2 % sales tax on said surplus goods, it was remitting the sum of P43,750.00 in his behalf as deposit to answer for the payment of said sales tax with the understanding that it would later be adjusted after the determination of the exact consideration of the sale.

On January 31, 1948, the syndicate again wrote the Collector requesting the refund of P1,103.28 representing alleged excess payment of sales tax due to the adjustment and reduction of the purchase price in the amount of P31,522.18. Said letter was referred to an agent for verification and report. On September 18, 1951, after a thorough investigation of the facts and circumstances surrounding the transaction, the agent reported (1) that Dee Hong Lue purchased the surplus goods as trustee for the Central Syndicate which was in the process of organization at the time of the bidding; (2) that it was the representative of the Central Syndicate that removed the surplus goods from their base at Leyte on February 21, 1947; (3) that the syndicate must have realized a gross profit of 18.8% from its sales thereof; and (4) that if the sales tax were to be assessed on its gross sales it would still be liable for the amount of P33,797.88 as deficiency sales tax and surcharge in addition to the amount of P43,750.00 which the corporation had deposited in the name of Dee Hong Lue as estimated sales tax due from the latter.

Based on the above findings of the agent in charge of the investigation, the Collector decided that the Central Syndicate was the importer and original seller of the surplus goods in question and, therefore, the one liable to pay the sales tax. Accordingly, on January 4, 1952, the Collector assessed against the syndicate the amount of P33,797.88 and P300.00 as deficiency sales tax, inclusive of the 25% surcharge and compromise penalty, respectively, and on the same date, in a separate letter, he denied the request of the syndicate for the refund of the sum of P1,103.28.

On September 8, 1954, the Central Syndicate elevated the case to the Court of Tax Appeals questioning the ruling of the Collector which denies its claim for refund as well as the assessment made against it of the sum of P33,797.88, plus the sum of P300.00 as compromise penalty, as stated above. The Collector filed his answer thereto wherein he reiterated his ruling and prayed that the Central Syndicate be ordered to pay the deficiency sales tax and surcharge as demanded in his letters dated January 4, 1952 and August 5, 1954. On October 28, 1954, the syndicate filed a motion requesting that the issue of prescription it has raised against the collection of the tax be first determined as a preliminary question, but action thereon was deferred by the Court of Tax Appeals

until after the trial of the case on the merits.

On November 5, 1954, the Collector filed a motion requiring the syndicate to file a bond to guarantee the payment of the tax assessed against it which motion was denied by the Court of Tax Appeals on the ground that that cannot be legally done it appearing that the syndicate is already a non-existing entity due to the expiration of its corporate existence. In view of this development, the Collector filed a motion to dismiss the appeal on the ground of lack of personality on the part of the syndicate, which met an opposition on the part of the latter, but on January 25, 1955, the Court of Tax Appeals issued a resolution dismissing the appeal primarily on the ground that the Central Syndicate has no personality to maintain the action then pending before it. From this order the syndicate appealed to the Supreme Court wherein it intimated that the appeal should not be dismissed because it could be substituted by its successors-in-interest, to wit: Tan Tiong Bio, Yu Khe Thai, Alfonso Sycip, Dee Hong Lue, Lim Shui Ty, Sy Seng Tong, Sy En, Co Giap and David Sycip. And taking cue from this suggestion, this Court ruled against the dismissal and held: "The resolution appealed from is set aside and the respondent court is ordered to permit the substitution of the officers and directors of the defunct Central Syndicate as appellants, and to proceed with the hearing of the appeal upon its merits." In permitting the substitution, this Court labored under the premise that said officers and directors "may be held personally liable for the unpaid deficiency assessments made by the Collector of Internal Revenue against the defunct syndicate."

After trial, the Court of Tax Appeals rendered decision the dispositive part of which reads as follows:

"WHEREFORE, in view of the foregoing consideration, the decision of the Collector of Internal Revenue appealed from is hereby affirmed, except with regard to the imposition of the compromise penalty of P300.00 the collection of which is unauthorized and illegal in the absence of a compromise agreement between the parties. (Collector of Internal Revenue vs. University of Sto. Tomas, G. R. No. L-11274, November 28, 1958; Collector of Internal Revenue vs. Bautista & Tan, G.R. No. L-12250, May 27, 1959.)

"The petitioners Tan Tiong Bio, Yu Khe Thai, Lim Shui Ty, Alfonso Sycip, Sy En alias Sy Seng Sue, Dee Hong Lue, and Sy and Seng Tong, who appear in the Articles of Incorporation of the Central Syndicate Annex A (pp. 60-66, CTA rec.) as incorporators and directors of the corporation, the second named being in addition its President and the seventh its Treasurer, are hereby ordered to pay jointly and severally, to the Collector of Internal Revenue, the sum of P33,797.88 as deficiency sales tax and surcharge on the surplus goods purchased by them from the Foreign Liquidation Commission on July 5, 1946, from which they realized an estimated gross sales of P1,447,551.65, with costs. x x x "

Petitioners interposed the present appeal.

The important issues to be determined in this appeal are: (1) whether the importer of the surplus goods in question the sale of which is subject to the present tax liability is Dee Hong Lue or the Central Syndicate who has been substituted by the present petitioners; (2) whether the deficiency sales tax which is now sought to be collected has already prescribed; and (3) the Central Syndicate having already been dissolved because of the expiration of its corporate existence, whether the sales tax in question can be enforced against its successors-in-interest who are the present petitioners.

1. Petitioners contend that the Central Syndicate cannot be held liable for the deficiency sales tax in question because it is not the importer of the surplus goods purchased from the Foreign Liquidation Commission for the reason that said surplus goods were purchased by Dee Hong Lue as shown by the contract executed between him and the Foreign Liquidation Commission and the fact that the Central Syndicate only purchased the same from Dee Hong Lue and not from the Foreign Liquidation Commission as shown by Exhibit 13.

This contention cannot be sustained. As correctly observed by the Court of Tax Appeals, the overwhelming

evidence presented by the Collector points to the conclusion that Dee Hong Lue purchased the surplus goods in question not for himself but for the Central Syndicate which was then in the process of incorporation such that the deed of sale Exhibit 13 which purports to show that Dee Hong Lue sold said goods to the syndicate for a consideration of P1,250,000.00 (the same amount paid by Dee Hong Lue to the Foreign Liquidation Commission) "is but a ruse to evade payment of a greater amount of percentage tax." The aforesaid conclusion of the lower court was arrived at after a thorough analysis of the evidence on record, pertinent portion of which we quote hereunder with approval:

"Exhibit '38-A' for the respondent (p. 178, BIB rec.) shows that as early as July 23, 1946, or before the organization and incorporation of Central Syndicate, Mr. David Sycip, who was subsequently appointed General Manager of the corporation, together with Messrs. Sy En alias Sy Seng Sue (one of the incorporators of Central Syndicate), Serge Gordeof and Chiu Siu Bun (an employee of the same corporation), for and in the name of Central Syndicate then in the process of organization, went to Leyte to take over the surplus properties sold by the FLC to Dee Hong Lue, which the latter held in trust for the corporation. Exhibit 38-A, which is a certificate issued by no less than David Sycip himself who was subsequently appointed General Manager of the corporation admits in express terms the following x x x the surplus property sold by the Foreign Liquidation Commission to Dee Hong Lue (and held in trust by the latter for the Syndicate x x x." (Italics ours.) We give full weight and credence to the adverse admissions made by David Sycip against the petitioners as appearing in his certificate, Exhibit 38-A (p. 178, BIR rec.) considering that at the time he made them, he was a person jointly interested with the petitioners in the transaction over which there was yet no controversy over any sales tax liability. (Secs. 11 and 33, Rule 123, Rules of Court; *Clem vs. Forbeso*, Tex. Cir. App. 10 S. W. 2d 223; *Street vs. Masterson*, Tex. Cir. App. 277 S. W. 407.)

"Exhibit '39' for the respondent (pp. 184-187, BIR rec.) which is a letter of Mr. Yu Khe Thai, President, Director and birgest stockholder oi Central Syndicate (Exhibit A, pp. 60-65, CTA rec.) dated September 17, 1946 and addressed to the Commanding General AFWESPAC, Manila, contains the following categorical admissions which corroborates the admissions made by David Sycip; that the so-called Leyte 'Mystery Pile' surplus properties were owned by Central Syndicate by virtue of a purchase from the FLC, effected in the name of Dee Hong Lue on July 5, 1946, inasmuch as Central Syndicate was then still in the process of organization; that Dee Hong Lue held the said surplus properties in trust until the mere formal turnover to the corporation on August 20, 1946, when the corporation had already been organized and incorporated under the laws of the Philippines; and that on July 23, 1946 viz., twenty-two (22) days before the incorporation of Central Syndicate on August 15, 1946 'our General Manager, Mr. David Sycip accompanied by one of our directors, Mr. Sy En, arrived in Leyte to take over the properties.'

"Before passing on to the rest of the evidence supporting the finding of respondent, we would like to call attention to this significant detail. It is stated in the letter, Exhibit 39 (pp. 184-187, BIR rec.) of Mr. Yu Khe Thai that 'on July 23, 1946, our General Manager, Mr. David Sycip, accompanied by one of our directors, Mr. Sy En, arrived in Leyte to take over the properties.' We ask: Why was there such a hurry on the part of the promoters of Central Syndicate in taking over the surplus properties when the formal agreement, Exhibit 13 (p. 66, BIR rec.), purporting to be a contract of sale of the 'Mystery Pile' Jbetween Dee Hong Lue, as vendor, and the Central Syndicate, as vendee, for the amount of P1,250,000.00, was effected twenty-eight (28) days later viz., on August 20, 1946? Is this not another clear and unmistakable indication that from the very start, as is the theory of the respondent, the real purchasers of the 'Mystery Pile' from the FLC and as such the 'importers' of the goods, were the Central Syndicate and/or the 'group of big financiers composing it before said corporation was incorporated on August 15, 1946; and, that Dee Hong Lue acted merely as agent of these persons when he purchased the pile from the FLC? As a general rule, one does not exercise all the acts of ownership over a property especially if it involves a big amount until after the documents evidencing such ownership are fully accomplished.

"Moreover, it appears that on October 3, 1946, Dee Hong Lue wat investigated by Major Primitivo San

Agustin, Jr., G-2 of the Philippine Army, because of the discovery of some gun parts found in his shipment of surplus material from Palo, Leyte.

"In his sworn statement, Exhibit 16 (pp. 133-139, BIR rec) before said officer, Dee Hong Lue admitted the following: That he paid the FLC the amount of P1,250,000.00 'with the checks of Yu Khe Thai, maybe also Alfonso Sycip and my checks with many others', that 'at the beginning I was trying to buy the pile for myself without telling other people and other friends of mine.' 'Watkins came to me and he bid for me for P600,000 or P700,000, but later on when the price went up to P1,250,000, I talked to my friends who said I could get the money.' 'So, I bought it with their checks and mine' (Exhibit 16-B, p. 138, BIR rec.) and, that after buying the 'Mystery Pile', he (Dee Hong Lue) never inspected the same personally, (p. 141, BIR rec.)

"In his affidavit, Exhibit 15 (p. 144, BIR rec.) Dee Hong Lue admitted that of the amount of P1,250,000.00 which he paid in two installments sometime in July, 1946, to the FLC, P1,181,250.00 (should be P1,181,000.00) of the amount came from the following: Yu Khe Thai who advanced to him P260,000.00; Sy Seng Tong—P375,000.00; Alfonso Z. Sycip—P375,000.00; Tan Tiong Bio—P125,000.00; Robert Dee Se Wee—P25,000.00; and, Jose S. Lim P31,000.00; that his understanding with these persons was that should they eventually join him in Central Syndicate, such advances would be adjusted to constitute their investments; and, that soon after the 'Mystery Pile' was purchased from the FLC all the above-named persons with the exception of Robert Dee Se Wee and Jose S. Lim, formed the Central Syndicate and a re-allocation of shares was made corresponding to the amounts advanced by them.

"Added to these, we have before us other documentary evidence for the respondent consisting of Exhibits 18, 19, 20, 21, 23, 24, 25, 26, 27, 28 and 29 (pp. 85, 88, 92-96, 99-103, 117-128, 119-120, 121-128, BIR rec.) all tending to prove the same thing—that the Central Syndicate and/or the group of big financiers composing it and not Dee Hong Lue was the real purchaser (importer) of the 'Mystery Pile' from the FLC; that in the contract of sale between Dee Hong Lue and the FLC the former acted principally as agent (Article 1930, New Civil Code) of the petitioners Yu Khe Thai, Sy Seng Tong, Alfonso Z. Sycip and Tan Tiong Bio who advanced the purchased price of the P1,125,000.00 out of the P1,250,000.00 paid to the FLC, Dee Hong Lue being the purchaser in his own right only with respect to the amount of P69,000.00; and, that the deed, Exhibit 13 (p. 77, BIR rec.) purporting to show that Dee Hong Lue sold the 'Mystery Pile' to the Central Syndicate for a consideration of P1,250,000.00 is but a ruse to evade payment of a greater amount of percentage tax.

"To our mind, the deed of sale, Exhibit 13 (p. 66, BIR rec.) as well as the circumstances surrounding the incorporation of the Central Syndicate, are shrouded with as much mystery as the so-called 'Mystery Pile' subject of the transaction. But, as oil is to water, the truth and underlying motives behind this transactions have to surface in the end. Petitioners would want us to believe that Dee Hong Lue bought in his own right and for himself the surplus goods in question for P1,250,000.00 from the FLC and then, by virtue of a valid contract of sale, Exhibit 13 (p. 66, BIR rec.) transferred and conveyed the same to the Central Syndicate at cost. If this be so, what need was there for Dee Hong Lue to agree in the immediate organization and incorporation of the Central Syndicate with six other capitalists when he could very well have disposed of the surplus goods to the public in his individual capacity and keep all the profits to himself without sharing 9/10th of it to the other six incorporators and stock holders of the newly incorporated Syndicate.

"It appears that Dee Hong Lue 'sold' the pile to the Central Syndicate for exactly the same price barely forty-six (46) days after acquiring it from FLC and exactly five (5) days after the Syndicate was registered with the Securities and Exchange Commission on August 19, 1946. This is indeed most unusual for a businessman like Dee Hong Lue who, it is to be presumed, was out to make a killing when he acquired the surplus goods from the FLC for the staggering amount of P1,750,000.00 in cash.

"Again, why did Dee Hong Lue waste all his time and effort not to say his good connections with the FLC by acquiring the goods from that agency only to sell it for the same amount to the Central Syndicate? This would have been understandable if Dee Hong Lue were the biggest and controlling stockholder of the Syndicate. He

could perhaps reason out to himself, 'the profits which I am sacrificing now in this sale to the Syndicate, I will get it anyway in the form of dividends from it after it shall have disposed of all the "Mystery Pile" to the public' But then, how could this be possible when Dee Hong Lue was the smallest subscriber to the capital stock of the Syndicate? It appears from the Articles of Incorporation that of the authorized capital stock of the corporation in the amount of P500,000.00, Dee Hong Lue subscribed to only P20,000.00 or 1/25th of the capital stock authorized and of this amount only P5,000.00 was paid by him at the time of incorporation. So here is an experienced businessman like Dee Hong Lue who, following the theory of petitioners' counsel, bought the 'Mystery Pile' for himself for P1,250,000.00 in cash, and after a few days sold the same at cost to a corporation wherein he owned only 1/25th of the authorized capital stock and wherein he was not even an officer, thus doling out to the other six incorporators and stockholders net profits in the sum conservatively estimated by the respondent to be P206,116.45 out of a total of P229,073.83 which normally could all go to him. We take judicial notice of the fact that as a result of our immense losses in property throughout the archipelago during the Japanese occupation, either through destruction or systematic commandeering by the enemy and our own forces, surplus properties commanded a very good price in the open market after the liberation and that quite a number of surplus dealers made immense fortunes out of it. We believe the respondent was quite charitable if not more than fair to the Central Syndicate in computing the profits realized by it in the resale of the 'Mystery Pile' to the public at only 18.8% of the acquisition price.

"Now, from the side of the Central Syndicate. This corporation, as its articles of incorporation, Exhibit A (pp. 60-66, CTA rec.) will show, was incorporated on August 15, 1946 with an authorized capital stock of P500,000.00 of which P200,000.00 worth was subscribed by seven (7) persons and P50,000.00 paid-up in cash at the time of incorporation. Five (5) days after its incorporation, as the Deed of Sale, Exhibit 13 (p. 66, BIR rec.) purports to show, the said corporation bought from Dee Hong Lue the 'Mystery Pile' for P1,250,000.00 in cash. This is indeed quite phenomenal and fantastic not to say the utmost degree of high finance, considering that the corporation had a subscribed capital stock of only P200,000.00 of which only P50,000.00 was paid-up at the time of incorporation and with not the least proof showing that it ever borrowed money in its own name from outside source to raise the enormous amount allegedly paid to Dee Hong Lue nor evidence to show that it had by then in so short a time as five (5) days accumulated a substantial reserve to meet Dee Hong Lue's selling price.

"Furthermore, at first blush it would seem quite difficult to understand why the seven (7) incorporators and stockholders of the Central Syndicate formed a corporation with a subscribed capital stock of only P200,000.00, and with cash on hand of only P50,000.00 knowing full well that there was a transaction awaiting the newly registered corporation involving an outlay of P1,250,000.00 in cash. We believe this was done after mature deliberation and for some ulterior motive. As we see it, the only logical answer is that the incorporators wanted to limit whatever civil liability that might arise in favor of third persons, as the present tax liability has now arisen, up to the amount of their subscription, although the surplus deal they transacted and which we believe was the only purpose in the incorporation of the Central Syndicate, was very much over and above their authorized capital. Moreover, by limiting its capital, the corporation was also able to save on incidental expenses, such as attorney's fee and the filing fee paid to the Securities and Exchange Commission, which were based on the amount of the authorized capital stock.

Another mystery worth unravelling is what happened to the P1,181,240.00 (should be P1,181,000.00) which Dee Hong Lue in his affidavit, Exhibit 15 (p. 144, BIR rec.) claims to have received from Messrs. Yu Khe Thai, Sy Seng Tong, Alfonso Z. Sycip, Tan Tiong Bio (all incorporators of the Syndicate) and two others as 'advances' with which to pay the FLC. There is no evidence on record to show that Dee Hong Lue ever returned this amount to those six (6) persons after he supposedly received P1,250,000.00 from the newly incorporated Syndicate by virtue of the Deed of Sale, Exhibit 13. This is the explanation that Dee Hong Lue gave in this regard as appearing in his affidavit, Exhibit 15: 'That soon after the abovementioned property was purchased, the above parties, with the exception of Robert Dee Se Wee and Jose S. Lim decided to join the proposed Central Syndicate and a re-allocation of shares was made for the reason that some of the above

parties in turn had to get advances from third parties.' If this were true, why was it that Messrs. Yu Khe Thai, Sy Seng Tong, Alfonso Z. Sycip and Tan Tiong Bio who advanced P250,000.00; P375,000.00 and P125,000.00 to Dee Hong Lue were made to appear in the Articles of Incorporation of the Central Syndicate as having subscribed to shares worth only P40,000.00; P30,000.00; P30,000.00 and P20,000.00 and having paid only P10,000.00, P7,500.00, P7,500.00, and P5,000.00 on their subscriptions, respectively? Would it not be more in keeping with corporate practice, following the explanation of Dee Hong Lue, to just credit those four (4) persons in the corporation with shares worth the amount advanced by them to Dee Hong Lue?

"On the basis of the above figures, the re-allocation of shares in favor of the four (4) incorporators who advanced enormous sums for the Syndicate seems at first glance to be totally disproportionate and unfair to them. However, in the final analysis it is not so as we will now show. Immediately after the incorporation of the Syndicate, as the evidence shows, Dee Hong Lue was made to execute a deed of transfer under the guise of a contract of sale, conveying full and complete ownership of the 'Mystery Pile' to the newly organized corporation. So we have, on the face of the Articles of Incorporation and Exhibit 13, a corporation with assets worth only P50,000.00 cash owning properties worth over a million pesos. Obviously, the incorporators of the Syndicate, particularly those four who advanced enormous sums to Dee Hong Lue, are not ordinary businessmen who could easily be taken for a ride. With the precipitated execution of the 'Deed of Sale' by Dee Hong Lue in favor of the Syndicate, transferring and conveying ownership over the entire pile to the latter, the recoupment of their advances from the newly acquired assets of the corporation was sufficiently secured, and at the same time, by making the document appear to be a deed of sale instead of a deed of transfer as it should be under Article 1891 of the New Civil Code, they have reduced (at least attempted to) their sale tax liability with the argument that Dee Hong Lue was the original 'purchaser' or 'importer' of the goods and therefore the taxable sale was that one made by him to the Syndicate and not the sales made by the latter to the public. After going over the Articles of Incorporation of the Central Syndicate and the other circumstances of this case, we draw the conclusion that it was organized just for this particular transaction that its life span was expressly limited to two (2) years from and after the date of incorporation just to give it time to dispose of the 'Mystery Pile' to the public and then liquidate all its assets among the seven incorporators-stockholders as in fact it was done on August 15, 1948; that from the very start, the seven (7) incorporators had intended it to be a closed corporation without the least intention of ever selling to other persons the remaining authorized capital stock of P300,000.00 still unsubscribed; and, that upon its liquidation, the seven (7) incorporators composing it got much more than their investments including those who advanced P1,181,000.00 to the FLC for the corporation."

Petitioners would dispute the finding that Dee Hong Lue merely acted as a trustee of the Central Syndicate when he purchased the surplus goods in question from the Foreign Liquidation Commission on July 5, 1946 considering that on that date the syndicate has not yet been incorporated on the theory that no legal relation may exist between parties one of whom has yet no legal existence. Technically this may be true, but the fact remains that it cannot be denied that Dee Hong Lue purchased the goods on behalf of those who advanced the money for the purchase thereof who later became the incorporators and only stockholders of the syndicate with the understanding that the amounts they had respectively advanced would be their investment and would represent their interest in the corporation. And this is further evidenced by the fact that this purchase made by Dee Hong Lue was later approved and adopted as the act of the Central Syndicate itself as can be gleaned from the certificate executed by David Sycip, general manager of said syndicate, on September 16, 1946, wherein he emphasized that the persons named therein (from whom Dee Hong Lue obtained the money) merely acted on behalf of the syndicate and in fact were the ones who went to Leyte to take over the aforesaid surplus goods. In any event, even if Dee Hong Lue may be deemed as the purchaser of the surplus goods in his own right, nevertheless, the corporation still may be regarded as the importer of the same goods for the reason that Dee Hong Lue transferred to it all his rights and interests in the contract with the Foreign Liquidation Commission and it was said corporation that took delivery thereof from the place where they were stored in Leyte as may be seen from the

letter of Dee Hong Lue to the Foreign Liquidation Commission dated September 2, 1946 and the letter of the Central Syndicate to the said Commission bearing the same date. Under these facts, it is clear that the Central Syndicate is the importer of the surplus goods as correctly observed by Judge Umali in his concurring opinion, from which we quote:

"It is now well settled that a person who bought surplus goods from the Foreign Liquidation Commission and who removed the goods bought from the U. S. military bases in the Philippines is considered an importer of such goods and is subject to the sales tax or compensating tax, as the case may be. (Go Cheng Tee vs. Meer, 47 Off. Gaz., 269; Saura Import and Export vs. Meer, 88 Phil., 199; P.M.P. Navigation vs. Meer, 91 Phil., 32; A Soriano y Cia vs. Coll. of Int. Rev., 97 Phil., 505; 51 Off. Gaz., 4548). In this case it appears that the Central Syndicate was the owner of the 'Mystery Pile' before its removal from Base K and that it was the one which actually took delivery thereof and removed the same from the U. S. military base, it is the importer within the meaning of Section 186 of the Revenue Code, as it stood before the enactment of Republic Act No. 594, and its sales of the surplus goods are the original sales taxable under said section and not the sale to it by Dee Hong Lue."

2. Since the Central Syndicate, as we have already pointed out, was the importer of the surplus goods in question, it was its duty under Section 183 of the Internal Revenue Code to file a return of its gross sales within 20 days after the end of each quarter in order that the office of the internal revenue may assess the sales tax that may be due thereon, but, as the record shows, the Central Syndicate failed to file any return of its quarterly sales on the pretext that it was Dee Hong Lue who imported the surplus goods and it merely purchased them from said importer. This is in fact what the syndicate intended to impress upon the Collector when it wrote to him its letter of October 19, 1946 informing him that it purchased from Dee Hong Lue the entire stock of the surplus goods which the latter had bought from the Foreign Liquidation Commission and waft therefore depositing in his name the sum of P43,750.00 to answer for his sales tax liability, but this letter certainly cannot be considered as a return that may set in operation the application of the prescriptive period provided for in Section 331 of the Tax Code, for, evidently, said letter if at all could only be considered as such in behalf of Dee Hong Lue and not in behalf of the Central Syndicate because such is the only nature and import of the letter. Besides, how can such letter be considered as a return of the sales of the Central Syndicate when it was only on February 21, 1947 when it removed the surplus goods in question from their base at Leyte? How can such return inure to the benefit of the syndicate when the same surplus goods which were removed on said date could not have been sold by the corporation earlier than the aforesaid date? It is obvious that the letter of October 19, 1946 cannot possibly be considered as a return filed by the syndicate and so cannot serve as basis for the computation of the prescriptive period of five years prescribed by law.

Nor can the fact that the Collector did not include in the assessment a surcharge of 50% serve as an argument that a return had already been filed for such failure can only mean that an oversight had been committed in the non-inclusion of said surcharge. The syndicate having failed to file its quarterly returns as required by Section 183 of the Tax Code, the period that has to be reckoned with is that embodied in Section 332 of the same Code which provides that in case of failure to file the return the tax may be assessed within 10 years after discovery of the falsity, fraud, or omission of the payment of the proper tax. Since it appears that the Collector discovered the failure of the syndicate to file the return only on September 12, 1951, he has therefore up to September 18, 1961 within which to assess or collect the deficiency tax in question. Consequently, the assessment made on January 4, 1952 was made within the prescribed period.

3. Petitioners argue (1) that the Court of Tax Appeals acted in excess of its jurisdiction in holding them liable as officers or directors of the defunct Central Syndicate for the tax liability of the latter; (2) that petitioners cannot be held liable for said tax liability there being no statutory provision in this jurisdiction authorizing the government

to proceed against the stockholders of a defunct corporation as transferees of the corporate assets upon liquidation; (3) that assuming that the stockholders can be held so liable, they are only liable to the extent of the benefits derived by them from the corporation, and there is no evidence showing that petitioners had been the beneficiaries of the defunct syndicate; (4) that considering that the Collector instituted the present action on September 23, 1954 when, he filed his answer to the appeal of petitioners, said action was already barred by prescription pursuant to Sections 77 and 78 of the Corporation Law which allows corporations to continue as a body corporate only for three years from its dissolution; and (5) that assuming that petitioners are liable to pay the tax, their liability is not solidary, but only limited to the benefits derived by them from the corporation.

It should be stated at the outset that it was petitioners themselves who caused their substitution as parties in the present case, being the successors-in-interest of the defunct syndicate, when they appealed this case to the Supreme Court for which reason the latter Court declared that "the respondent Court of Tax Appeals should have allowed the substitution of its former officers and directors as parties-appellants, since they are proper parties in interest insofar as they may be (and in fact are) held personally liable for the unpaid deficiency assessments made by the Collector of Internal Revenue against the defunct Syndicate." In fact, because of this directive their substitution was effected. They cannot, therefore, be now heard to complain if they are made responsible for the tax liability of the defunct syndicate whose representation they assumed and whose assets were distributed among them.

In the second place, there is good authority to the effect that the creditor of a dissolved corporation may follow its assets once they passed into the hands of the stockholders. Thus, recognized are the following rules in American jurisprudence: The dissolution of a corporation does not extinguish the debts due or owing to it (*Bacon vs. Robertson*, 18 How. 480, 15 L. Ed., 406; *Curran vs. State*, 16 How. 304, 14 L. Ed., 705). A creditor of a dissolved corporation may follow its assets, as in the nature of a trust fund, into the hands of its stockholders (MacWilliams vs. Excelsior Coal Co. [1924] 298 Fed. 384). An indebtedness of a corporation to the federal government for income and excess profit taxes is not extinguished by the dissolution of the corporation (*Quinn vs. Mcleudon*, 152 Ark. 271, 238 S.W., 32). And it has been stated, with reference to the effect of dissolution upon taxes due from a corporation, "that the hands of the government cannot, of course, collect taxes from a defunct corporation, it loses thereby none of its rights to assess taxes which had been due from the corporation, and to collect them from persons, who by reason of transactions with the corporation, hold property against which the tax can be enforced and that the legal death of the corporation no more prevents such action than would the physical death of an individual prevent the government from assessing taxes against him and collecting them from his administrator, who holds the property which the decedent had formerly possessed" (*Wonder Bakeries Co. vs. U. S.* [1934] Ct. Cl., 6 F. Supp. 228). Bearing in mind that our corporation law is of American origin, the foregoing authorities have persuasive effect in considering similar cases in this jurisdiction. This must have been taken into account when in G. R. No. L-8800 this Court said that petitioners could be held personally liable for the taxes in question as successors-in-interest of the defunct corporation.

Considering that the Central Syndicate realized from the sale of the surplus goods a net profit of P229,073.83, and that the sale of said goods was the only transaction undertaken by said syndicate, there being no evidence to the contrary, the conclusion is that said net profit remained intact and was distributed among the stockholders when the corporation liquidated and distributed its assets on August 15, 1948, immediately after the sale of the said surplus goods. Petitioners are therefore the beneficiaries of the defunct corporation and as such should be held liable to pay the taxes in question. However, there being no express provision requiring the stockholders of the corporation to be solidarily liable for its debts which liability must be express and cannot be presumed, petitioners should be held to be liable for the tax in question only in proportion to their shares in the distribution of the assets of the defunct corporation. The decision of the trial court should be modified accordingly.

Wherefore, with the above modification, we hereby affirm the decision appealed from, with costs against petitioners.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, and Dizon, JJ., concur.

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