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We, accordingly, rule that no damages should be awarded for the agricultural year 1963-1964. However, damages of ₱431.25 per year for every succeeding agricultural year thereafter until actual reinstatement stands; for, good faith had ceased.

Modified as just stated, the original and supplemental decisions of the Court of Agrarian Relations are hereby affirmed in all other respects.

Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee and *Barredo, JJ.*, concur.

[G.R. No. L-24059. November 28, 1969]

C.M. HOSKINS & CO., INC., petitioner *vs.* COMMISSIONER OF INTERNAL REVENUE. respondent.

SYLLABUS

1. TAXATION; INCOME TAX; DEDUCTIONS FROM NET INCOME; ORDINARY AND NECESSARY EXPENSES; INORDINATELY LARGE COMMISSIONS AND FEES PAID TO CONTROLLING STOCKHOLDER ARE DISALLOWED AS DEDUCTIBLE EXPENSES; CASE AT BAR.— Considering that in addition to being Chairman of the board of directors of petitioner corporation, which bears his name, Hoskins, who owned 99.6% of its total authorized capital stock while the four other officers-stockholders of the firm owned a total of four-tenths of 1%, or one-tenth of 1% each, with their respective nominal shareholdings of one share each, was also salesmanbroker for his company, receiving a 50% share of the sales commissions earned by petitioner, besides his monthly salary of ₱3,750.00 amounting to an annual compensation of ₱45,000.00 and an annual salary bonus of ₱40,000.00, plus free use of the company car and receipt of other similar allowances and benefits, the Tax Court correctly ruled that the payment by petitioner to Hoskins of the

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additional sum of ₱99,977.91 as his equal or 50% share of the 8% supervision fees received by petitioner as managing agents of the real estate, subdivision projects of Paradise Farms, Inc. and Realty Investments, Inc. was inordinately large and could not be accorded the treatment of ordinary and necessary expenses allowed as deductible items within the purview of Section 30(a)(i) of the Tax Code.

2. ID.; ID.; ID.; BONUSES AS DEDUCTIBLE EXPENSE.— It is a general rule that bonuses to employees made in good faith and as additional compensation for the services actually rendered by the employees are deductible, provided such payments, when added to the stipulated salaries, do not exceed a reasonable compensation for the services rendered.

3. ID.; ID.; ID.; ID.; NECESSARY CONDITIONS FOR SUCH DEDUCTION.— The condition precedents to the deduction of bonuses to employees are: (1) the payment of the bonuses is in fact compensation; (2) it must be for personal services actually rendered; and (3) the bonuses, when added to the salaries, are reasonable . . . when measured by the amount and quality of the services performed with relation to the business of the particular taxpayer.

4. ID.; ID.; ID.; ID.; REASONABLENESS THEREOF TO BE SHOWN.— As far as petitioner's contention that as employer it has the right to fix the compensation of its officers and employees and that it was in the exercise of such right that it deemed proper to pay the bonuses in question, all that We need say is this: that right may be conceded, but for income tax purposes the employer cannot legally claim such bonuses as deductible expenses unless they are shown to be reasonable. To hold otherwise would open the gate of rampant tax evasion.

5. ID.; ID.; CORPORATE TAX LIABILITY OF CORPORATION OF SOLE PROPRIETORSHIP.— Petitioner corporation, a sole proprietorship of C.M. Hoskins who virtually holds 99.6% of the stocks of said corporation is duty bound to pay the income tax imposed on corporations and may not legally be permitted, by way of corporate resolution authorizing payment of inordinately large commissions and fees to its controlling stockholder, to dilute and diminish its corresponding corporate tax liability.

APPEARANCES OF COUNSEL

Ross, Selph, Salcedo, del Rosario, Bito & Misa for petitioner.

Solicitor General Arturo A. Alafriz, Assistant Solicitor General Felicisimo R. Rosete and *Special Attorney Michaelina R. Balasbas* for respondent.

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DECISION

TEEHANKEE, *J.*:

We uphold in this taxpayer's appeal the Tax Court's ruling that payment by the taxpayer to its controlling stockholder of 50% of its supervision fees or the amount of ₱99,977.91 is not a deductible ordinary and necessary expense and should be treated as a distribution of earnings and profits of the taxpayer.

Petitioner, a domestic corporation engaged in the real estate business as brokers, managing agents and administrators, filed its income tax return for its fiscal year ending September 30, 1957 showing a net income of ₱92,540.25 and a tax liability due thereon of ₱18,508.00, which it paid in due course. Upon verification of its return, respondent Commissioner of Internal Revenue, disallowed four items of deduction in petitioner's tax returns and assessed against it an income tax deficiency in the amount of ₱28,054.00 plus interests. The Court of Tax Appeals upon reviewing the assessment at the taxpayer's petition, upheld respondent's disallowance of the principal item of petitioner's having paid to Mr. C.M. Hoskins, its founder and controlling stockholder the amount of ₱99,977.91 representing 50% of supervision fees earned by it and set aside respondent's disallowance of three other minor items. The Tax Court therefore determined petitioner's tax deficiency to be in the amount of ₱27,145.00 and on November 8, 1964 rendered judgment against it, as follows:

"WHEREFORE, premises considered, the decision of the respondent is hereby modified. Petitioner is ordered to pay to the latter or his representative the sum of ₱27,145.00, representing deficiency income tax for the year 1957, plus interest at 1/2% per month from June 20, 1959 to be computed in accordance with the provisions of Section 51(d) of the National Internal Revenue Code. If the deficiency tax is not paid within thirty (30) days from the date this decision becomes final, petitioner is also ordered to pay surcharge and interest as provided for in Section 51(e) of the Tax Code, without costs."

Petitioner questions in this appeal the Tax Court's findings that the disallowed payment to Hoskins was an inordinately large

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one, which bore a close relationship to the recipient's dominant stockholdings and therefore amounted in law to a distribution of its earnings and profits.

We find no merit in petitioner's appeal.

As found by the Tax Court, "petitioner was founded by Mr. C.M. Hoskins in 1937, with a capital stock of 1,000 shares at a par value of ₱1.00 each share; that of these 1,000 shares, Mr. C.M. Hoskins owns 996 shares (the other 4 shares being held by the other four officers of the corporation), which constitute exactly 99.6% of the total authorized capital stock (p. 92, t.s.n.); that during the first four years of its existence, Mr. C.M. Hoskins was the President, but during the taxable period in question, that is, from October 1, 1956 to September 30, 1957, he was the chairman of the Board of Directors and salesmanbroker for the company (p. 93, t.s.n.); that as chairman of the Board of Directors, he received a salary of ₱3,750.00 a month, plus a salary bonus of about ₱40,000.00 a year (p. 94, t.s.n.); that he was also a stockholder and officer of the Paradise Farms, Inc. and Realty Investments Inc., from which petitioner derived a large portion of its income in the form of supervision fees and commissions earned on sales of lots (pp. 97-99, t.s.n.; Financial Statements, attached to Exhibit '1', p. 11, BIR rec.); that as chairman of the Board of Directors of petitioner, his duties were: 'To act as a salesman; as a director, presides over meetings and to get all of the real estate business I could for the company by negotiating sales, purchases, making appraisals, raising funds to finance real estate operations where that was necessary' (p. 96, t.s.n.); that he was familiar with the contract entered into by the petitioner with the Paradise Farms Inc. and the Realty Investments Inc. by the terms of which petitioner was 'to program the development, arrange financing, plan the proposed subdivision as outlined in the prospectus of Paradise Farms, Inc., arrange contract for road constructions, with the provision of water supply to all of the lots and in general to serve as managing agents for the Paradise Farms, Inc. and subsequently for the Realty Investments, Inc." (pp. 96-97, t.s.n.)

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Considering that in addition to being Chairman of the board of directors of petitioner corporation, which bears his name, Hoskins, who owned 99.6% of its total authorized capital stock while the four other officers-stockholders of the firm owned a total of four-tenths of 1%, or one-tenth of 1% each, with their respective nominal shareholdings of one share each, was also salesmanbroker for his company, receiving a 50% share of the sales commissions earned by petitioner, besides his monthly salary of ₱3,750.00 amounting to an annual compensation of ₱45,000.00 and an annual salary bonus of ₱40,000.00, plus free use of the company car and receipt of other similar allowances and benefits, the Tax Court correctly ruled that the payment by petitioner to Hoskins of the additional sum of ₱99,977.91 as his equal or 50% share of the 8% supervision fees received by petitioner as managing agents of the real estate, subdivision projects of Paradise Farms, Inc. and Realty Investments, Inc. was inordinately large and could not be accorded the treatment of ordinary and necessary expenses allowed as deductible items within the purview of Section 30 (a) (i) of the Tax Code.

If such payment of ₱99,977.91 were to be allowed as a deductible item, then Hoskins would receive on these three items alone (salary, bonus and supervision fee) a total of ₱184,977.91, which would be double the petitioner's reported net income for the year of ₱92,540.25. As correctly observed by respondent, if independently, a one-time ₱100,000.00-fee to plan and lay down the rules for supervision of a subdivision project were to be paid to an experienced realtor such as Hoskins, its fairness and deductibility by the taxpayer could be conceded; but here 50% of the supervision fee of petitioner was being paid by it to Hoskins every year since 1955 up to 1963 and for as long as its contract with the subdivision owner subsisted, regardless of whether services were actually rendered by Hoskins, since his services to petitioner included such planning and supervision and were already handsomely paid for by petitioner.

The fact that such payment was authorized by a standing resolution of petitioner's board of directors, since "Hoskins had

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personally conceived and planned the project'' cannot change the picture. There could be no question that as Chairman of the board and practically an absolutely controlling stockholder of petitioner, holding 99.6% of its stock, Hoskins wielded tremendous power and influence in the formulation and making of the company's policies and decisions. Even just as board chairman, going by petitioner's own enumeration of the powers of the office, Hoskins could exercise great power and influence within the corporation, such as directing the policy of the corporation, delegating powers to the president and advising the corporation in determining executive salaries, bonus plans and pensions, dividend policies, etc.[1]

Petitioner's invoking of its policy since its incorporation of sharing equally sales commissions with its salesmen, in accordance with its board resolution of June 18, 1946, is equally untenable. Petitioner's Sales Regulations provide:

''*Compensation of Salesman*

''8. Schedule I — In the case of sales to prospects discovered and worked by a salesman, even though the closing is done by or with the help of the Sales Manager or other members of the staff, the salesmen get one-half (1/2) of the total commission received by the Company, but not exceeding five percent (5%). ***In the case of subdivisions, when the office commission covers general supervision, the 1/2-rule does not apply, the salesman's share being stipulated in the case of each subdivision. In most cases the salesman's share is 4%.*** (Exh. 'N-1').''[2]

It will be readily seen therefrom that when the petitioner's commission covers general supervision, it is provided that the 1/2 rule of equal sharing of the sales commissions does not apply and that the salesman's share is stipulated in the case of each subdivision. Furthermore, what is involved here is not Hoskins' salesman's share in the petitioner's 12% sales commission, which he presumably collected also from petitioner without respondent's questioning it, but a 50% share besides in petitioner's planning

[1] Petitioner's Reply Brief, pp. 5-6.

[2] Italics supplied.

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and supervision fee of 8% of the gross sales, as mentioned above. This is evident from petitioner's board's resolution of July 14, 1953 (Exhibit 7), wherein it is recited that in addition to petitioner's sales commission of 12% of gross sales, the subdivision owners were paying to petitioner 8% of gross sales as supervision fee, and a collection fee of 5% of gross collections, or total fees of 25% of gross sales.

The case before us is similar to previous cases of disallowances as deductible items of officers' extra fees, bonuses and commissions, upheld by this Court as not being within the purview of ordinary and necessary expenses and not passing the test of reasonable compensation.[3] In Kuenzle & Streiff, Inc. *vs.* Commissioner of Internal Revenue decided by this Court on May 29, 1969,[4] we reaffirmed the test of reasonableness, enunciated in the earlier 1967 case involving the same parties, that: "It is a general rule that 'Bonuses to employees made in good faith and as additional compensation for the services actually rendered by the employees are deductible, provided such payments, when added to the stipulated salaries, do not exceed a reasonable compensation for the services rendered' (4 Mertens, Law of Federal Income Taxation, Sec. 25.50, p. 410). The condition precedents to the deduction of bonuses to employees are: (1) the payment of the bonuses is in fact compensation; (2) it must be for personal services actually rendered; and (3) the bonuses, when added to the salaries, are 'reasonable . . . when measured by the amount and quality of the services performed with relation to the business of the particular taxpayer' (Idem, Sec. 25. 44, p. 395).

"There is no fixed test for determining the reasonableness of a given bonus as compensation. This depends upon many factors, one of them being 'the amount and quality of the services performed with relation to the business.' Other tests suggested

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[3] Cf. Alhambra *vs.* Collector 105 Phil. 1337; Kuenzle & Streiff, Inc. *vs.* Collector, 106 Phil. 355; Alhambra *vs.* Commissioner 21 SCRA 1111 (1967).

[4] 28 SCRA 366.

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are: payment must be 'made in good faith'; 'the character of the taxpayer's business, the volume and amount of its net earnings, its locality, the type and extent of the services rendered, the salary policy of the corporation'; 'the size of the particular business'; 'the employees' qualifications and contributions to the business venture'; and "general economic conditions' (4 Mertens, Law of Federal Income Taxation, Sec. 25.44, 25.49, 25.50, 25.51, pp. 407-412). However, 'in determining whether the particular salary or compensation payment is reasonable, the situation must be considered as a whole. Ordinarily, no single factor is decisive. . . . it is important to keep in mind that it seldom happens that the application of one test can give satisfactory answer, and that ordinarily it is the interplay of several factors, properly weighted for the particular case, which must furnish the final answer."

Petitioner's case fails to pass the test. On the right of the employer as against respondent Commissioner to fix the compensation of its officers and employees, we there held further that while the employer's right may be conceded, the question of the allowance or disallowance thereof as deductible expenses for income tax purposes is subject to determination by respondent Commissioner of Internal Revenue. Thus: "As far as petitioner's contention that as employer it has the right to fix the compensation of its officers and employees and that it was in the exercise of such right that it deemed proper to pay the bonuses in question, all that We need say is this: that right may be conceded, but for income tax purposes the employer cannot legally claim such bonuses as deductible expenses unless they are shown to be reasonable. To hold otherwise would open the gate of rampant tax evasion.

"Lastly, We must not lose sight of the fact that the question of allowing or disallowing as deductible expenses the amounts paid to corporate officers by way of bonus is determined by respondent exclusively for income tax purposes. Concededly, he has no authority to fix the amounts to be paid to corporate officers by way of basic salary, bonus or additional remuneration - a matter that lies more or less exclusively within the sound discretion

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of the corporation itself. But this right of the corporation is, of course, not absolute. It cannot exercise it for the purpose of evading payment of taxes legitimately due to the State."

Finally, it should be noted that we have here a case practically of a sole proprietorship of C. M. Hoskins, who however chose to incorporate his business with himself holding virtually absolute control thereof with 99.6% of its stock with four other nominal shareholders holding one share each. Having chosen to use the corporate form with its legal advantages of a separate corporate personality as distinguished from his individual personality, the corporation so created, i.e. petitioner, is bound to comport itself in accordance with corporate norms and comply with its corporate obligations. Specifically, it is bound to pay the income tax imposed by law on corporations and may not legally be permitted, by way of corporate resolutions authorizing payment of inordinately large commissions and fees to its controlling stockholder, to dilute and diminish its corresponding corporate tax liability.

ACCORDINGLY, the decision appealed from is hereby affirmed, with costs in both instances against petitioner.

Concepcion, C.J., Reyes, J.B.L, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando and *Barredo, JJ.*, concur.

[G.R. Nos. L-24373 and L-24374. November 28, 1969]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* MANUEL MARQUEZ, TOMAS NAVASCA, ANDRES ALCONTIN, ROGELIO ALCONTIN and FLORENCIO GERALDEZ, defendants-appellants.

SYLLABUS

1. REMEDIAL LAW; JURISDICTION OF COURT OF APPEALS AND SUPREME COURT; SINGLE DECISION IN SEPARATE OFFENSES DOES NOT JUSTIFY APPEAL TO COURT OF APPEALS IF ONE OF PENALTIES IMPOSED IS WITHIN