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"After a protracted conference among the members of the Arandela-Arena family, which was marked by emotional outbursts and outpouring of years of accumulated grievances and recriminations, an atmosphere of peace and reconciliation finally descended upon the family.

"Florentina Arena de Empleo, the principal accuser, executed on 6 July 1978, a document affirming and confirming the contents of the Special Power of Attorney and further requesting the Office of the Provincial Fiscal of Quezon to allow her to withdraw her complaint against Atty. Pedro M. Barretto, her mother Restituta Arandela, and her sister Lita Arena. Because of lack of interest and hostility of the complainant Florentina Arena de Empleo, the complaint for falsification of public document was dismissed.

"Considering that no damage has been suffered by the complainant, who had already validated the Special Power of Attorney by a document confirming its contents, it is respectfully recommended that the administrative complaint for disbarment against Atty. Pedro M. Barretto be dismissed with an admonition that he should be more circumspect in the performance of his duties as notary public in the future."

The Solicitor General concurs with the recommendation of the Provincial Fiscal.

WHEREFORE, finding the recommendation to be well-taken, Atty. Pedro M. Barretto is hereby reprimanded for acknowledging the special power of attorney without the presence of all the signatories thereto and warned that repetition of the same will be dealt with more severely.

SO ORDERED.

Makasiar, Aquino, Concepcion Jr., Guerrero, De Castro and *Escolin, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-26145. February 20, 1984]

THE MANILA WINE MERCHANTS, INC., *petitioner, vs.* THE COMMISSIONER OF INTERNAL REVENUE, *respondent.*

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SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; CORPORATE INCOME TAX; ADDITIONAL TAX ON ACCUMULATED EARNINGS; EXEMPTION THEREFROM.**— A prerequisite to the imposition of the additional tax imposed by Section 25 of the National Internal Revenue Code has been that the corporation be formed or availed of for the purpose of avoiding the income tax (or surtax) on its shareholders, or on the shareholders of any other corporation be permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders. If the earnings or profits were distributed, the shareholders would be required to pay an income tax thereon whereas, if the distribution were not made to them, they would incur no tax in respect to the undistributed earnings and profits of the corporation (Mertens, Law on Federal Income Taxation, Vol. 7, Chapter 39, p. 44). The touchstone of liability is the purpose behind the accumulation of the income and not the consequences of the accumulation (*Ibid.*, p. 47). Thus, if the failure to pay dividends is due to some other cause, such as the use of undistributed earnings and profits for the reasonable needs of the business, such purpose does not fall within the interdiction of the statute (*Ibid.*, p. 45).

2. **ID.; ID.; ID.; ID.; ID.; WHEN ACCUMULATION CONSIDERED UNREASONABLE.**— An accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not required for the purpose of the business, considering all the circumstances of the case (Sec. 21, Revenue Regulations No. 2).

3. **ID.; ID.; ID.; ID.; ID.; "REASONABLE NEEDS OF THE BUSINESS," CONSTRUED.**— To determine the "reasonable needs" of the business in order to justify an accumulation of earnings, the Courts of the United States have invented the so-called "Immediacy Test" which construed the words "reasonable needs of the business" to mean the immediate needs of the business, and it was generally held that if the corporation did not prove an immediate need for the accumulation of the earnings and profits, the accumulation was not for the reasonable needs of the business, and the penalty tax would apply (Mertens, Law of Federal Income Taxation, Vol. 7, Chapter 39, p. 103). American

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cases likewise hold that investment of the earnings and profits of the corporation in stock or securities of an unrelated business usually indicates an accumulation beyond the reasonable needs of the business (Helvering *vs.* Chicago Stockyards Co., 318 US 693; Helvering *vs.* National Grocery Co., 304 US 282).

4. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, BINDING.**— The finding of the Court of Tax Appeals that the purchase of the U.S.A. Treasury bonds were in no way related to petitioner's business of importing and selling wines, whisky, liquors and distilled spirits, and thus construed as an investment beyond the reasonable needs of the business is binding on Us, the same being factual (Renato Raymundo *vs.* Hon. De Jova, 101 SCRA 495). Furthermore, the wisdom behind this finding cannot be doubted. The case of J.M. Perry & Co. *vs.* Commissioner of Internal Revenue, 120 F 2d 123, supports the same.

5. **TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAX OF CORPORATIONS; ADDITIONAL TAX ON ACCUMULATED EARNINGS; EXCEPTION THEREFROM; ACCUMULATION OF EARNINGS, MUST BE USED FOR REASONABLE NEEDS OF BUSINESS WITHIN A REASONABLE TIME.**— The records further reveal that from May 1951 when petitioner purchased the U.S.A. Treasury shares, until 1962 when it finally liquidated the same, it (petitioner) never had the occasion to use the said shares in aiding or financing its importation. This militates against the purpose enunciated earlier by petitioner that the shares were purchased to finance its importation business. To justify an accumulation of earnings and profits for the reasonably anticipated future needs, such accumulation must be used within a reasonable time after the close of the taxable year (Mertens, *Ibid.*, p. 104).

6. **ID.; ID.; ID.; ID.; ID.; ID.; INTENTION AT THE TIME OF ACCUMULATION, BASIS OF THE TAX; ACCUMULATION OF PROFITS IN CASE AT BAR, UNREASONABLE.**— In order to determine whether profits are accumulated for the reasonable needs of the business as to avoid the surtax upon shareholders, the controlling intention of the taxpayer is that which is manifested at the time of accumulation not subsequently declared intentions which are merely the product of afterthought (Basilan Estates, Inc. *vs.* Comm. of Internal Revenue, 21 SCRA 17 citing Jacob Mertens, Jr., The Law of

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Federal Income Taxation, Vol. 7, Cumulative Supplement, p. 213; Smoot Sand & Gravel Corp. *vs.* Comm., 241 F 2d 197). A speculative and indefinite purpose will not suffice. The mere recognition of a future problem and the discussion of possible and alternative solutions is not sufficient. Definiteness of plan coupled with action taken towards its consummation are essential (Fuel Carriers, Inc. *vs.* US 202 F supp. 497; Smoot Sand & Gravel Corp. *vs.* Comm., *supra*.).Viewed on the foregoing analysis and tested under the "immediacy doctrine", We are convinced that the Court of Tax Appeals is correct in finding that the investment made by petitioner in the U.S.A. Treasury shares in 1951 was an accumulation of profits in excess of the reasonable needs of petitioner's business.

7. **ID.; ID.; ID.; ID.; ACCUMULATIONS OF PRIOR YEARS TAKEN INTO ACCOUNT IN DETERMINATION OF LIABILITY THEREFOR.—** The rule is now settled in Our jurisprudence that undistributed earnings or profits of prior years are taken into consideration in determining unreasonable accumulation for purposes of the 25% surtax (Sec. 21, Revenue Regulations No. 2). The case of Basilan Estates, Inc. *vs.* Commissioner of Internal Revenue, 21 SCRA 27 further strengthens this rule that in determining whether accumulations of earnings or profits in a particular year are within the reasonable needs of a corporation, it is necessary to take into account prior accumulations, since accumulations prior to the year involved may have been sufficient to cover the business needs and additional accumulations during the year involved would not be reasonably necessary.

APPEARANCES OF COUNSEL

Rafael D. Salcedo for petitioner.
The Solicitor General for respondent.

D E C I S I O N

GUERRERO, *J.*:

In this Petition for Review on Certiorari, petitioner, the Manila Wine Merchants, Inc., disputes the decision of the Court of Tax Appeals ordering it (petitioner) to pay respondent, the

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Commissioner of Internal Revenue, the amount of P86,804.38 as 25% surtax plus interest which represents the additional tax due petitioner for improperly accumulating profits or surplus in the taxable year 1957 under Sec. 25 of the National Internal Revenue Code.

The Court of Tax Appeals made the following finding of facts, to wit:

"Petitioner, a domestic corporation organized in 1937, is principally engaged in the importation and sale of whisky, wines, liquors and distilled spirits. Its original subscribed and paid capital was P500,000.00. Its capital of P500,000.00 was reduced to P250,000.00 in 1950 with the approval of the Securities and Exchange Commission but the reduction of the capital was never implemented. On June 21, 1958, petitioner's capital was increased to P1,000,000.00 with the approval of the said Commission.

On December 31, 1957, herein respondent caused the examination of herein petitioner's book of account and found the latter of having unreasonably accumulated surplus of P428,934.32 for the calendar year 1947 to 1957, in excess of the reasonable needs of the business subject to the 25% surtax imposed by Section 25 of the Tax Code.

On February 26, 1963, the Commissioner of Internal Revenue demanded upon the Manila Wine Merchants, Inc. payment of P126,536.12 as 25% surtax and interest on the latter's unreasonable accumulation of profits and surplus for the year 1957, computed as follows:

Unreasonable accumulation of surtax	P428,934.42
25% surtax due thereon	P107,234.00
Add: 1/2% monthly interest from June 20, 1959 to June 20, 1962	19,302.12
TOTAL AMOUNT DUE AND COLLECTIBLE	P126,536.12

Respondent contends that petitioner has accumulated earnings beyond the reasonable needs of its business because the average ratio of the cash dividends declared and paid by petitioner from 1947 to 1957 was 40.33% of the total surplus available for distribution at the end of each calendar year. On the other hand, petitioner contends that in

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1957, it distributed 100% of its net earnings after income tax and part of the surplus for prior years. Respondent further submits that the accumulated earnings tax should be based on 25% of the total surplus available at the end of each calendar year while petitioner maintains that the 25% surtax is imposed on the total surplus or net income for the year after deducting therefrom the income tax due.

The records show the following analysis of petitioner's net income, cash dividends and earned surplus for the years 1946 to 1957:[1]

Year	Net Income After Income Tax	Total Cash Dividends Paid	Percentage of Dividends to Net Income After Income Tax	Balance of Earned Surplus
1946	P613,790.00	P200,000.	32.58%	P234,104.81
1947	425,719.87	360,000.	84.56%	195,167.10
1948	415,591.83	375,000.	90.23%	272,991.38
1949	335,058.06	200,000.	59.69%	893,113.42
1950	399,698.09	600,000.	150.11%	234,987.07
1951	346,257.26	300,000.	86.64%	281,244.33
1952	196,161.97	200,000.	101.96%	277,406.30
1953	169,714.04	200,000.	117.85%	301,138.84
1954	238,124.85	250,000.	104.99%	289,262.69
1955	312,284.74	200,000.	64.04%	401,548.43
1956	374,240.28	300,000.	80.16%	475,788.71
1957	353,145.71	400,000.	113.27%	428,934.42
	P4,179,787.36	P3,585.000.	85.77%	P3,785,688.50

Another basis of respondent in assessing petitioner for accumulated earnings tax is its substantial investment of surplus or profits in unrelated business. These investments are itemized as follows:

1. Acme Commercial Co., Inc.	P 27,501.00
2. Union Insurance Society of Canton	1,145.76
3. U.S.A. Treasury Bond	347,217.50
4. Wack Wack Golf & Country Club	1.00
	P375,865.26

[1] Exhibit "C".

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As to the investment of P27,501.00 made by petitioner in the Acme Commercial Co., Inc., Mr. N.R.E. Hawkins, president of the petitioner corporation[2] explained as follows:

> 'The first item consists of shares of Acme Commercial Co., Inc. which the Company acquired in 1947 and 1949. In the said years, we thought it prudent to invest in a business which patronizes us. As a supermarket, Acme Commercial Co., Inc. is one of our best customers. The investment has proven to be beneficial to the stockholders of this Company. As an example, the Company received cash dividends in 1961 totalling P16,875.00 which was included in its income tax return for the said year.'

As to the investments of petitioner in Union Insurance Society of Canton and Wack Wack Golf Club in the sums of P1,145.76 and P1.00, respectively, the same official of the petitioner-corporation stated that:[3]

> 'The second and fourth items are small amounts which we believe would not affect this case substantially. As regards the Union Insurance Society of Canton shares, this was a pre-war investment, when Wise & Co., Inc., Manila Wine Merchants and the said insurance firm were common stockholders of the Wise Bldg. Co., Inc. and the three companies were all housed in the same building. Union Insurance invested in Wise Bldg. Co., Inc. but invited Manila Wine Merchants, Inc. to buy a few of its shares.'

As to the U.S.A. Treasury Bonds amounting to P347,217.50, Mr. Hawkins explained as follows:[4]

> 'With regards to the U.S.A. Treasury Bills in the amount of P347,217.50, in 1950, our balance sheet for the said year shows the Company had deposited in current account in various banks P629,403.64 which was not earning any interest. We decided to utilize part of this money as reserve to finance our importations and to take care of future expansion including acquisition of a lot and the construction of our own office building and bottling plant.

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[2] Exhibit "D".

[3] Exhibit "E".

[4] Exhibit "B".

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At that time, we believed that a dollar reserve abroad would be useful to the Company in meeting immediate urgent orders of its local customers. In order that the money may earn interest, the Company, on May 31, 1951 purchased US Treasury bills with 90-day maturity and earning approximately 1% interest with the face value of US$175,000.00. US Treasury Bills are easily convertible into cash and for the said reason they may be better classified as cash rather than investments.

The Treasury Bills in question were held as such for many years in view of our expectation that the Central Bank inspite of the controls would allow no-dollar licenses importations. However, since the Central Bank did not relax its policy with respect thereto, we decided sometime in 1957 to hold the bills for a few more years in view of our plan to buy a lot and construct a building of our own. According to the lease agreement over the building formerly occupied by us in Dasmariñas St., the lease was to expire sometime in 1957. At that time, the Company was not yet qualified to own real property in the Philippines. We therefore waited until 60% of the stocks of the Company would be owned by Filipino citizens before making definite plans. Then in 1959 when the Company was already more than 60% Filipino owned, we commenced looking for a suitable location and then finally in 1961, we bought the main lot with an old building on Otis St., Paco, our present site, for P665,000.00. Adjoining smaller lots were bought later. After the purchase of the main property, we proceeded with the remodelling of the old building and the construction of additions, which were completed at a cost of P143,896.00 in April, 1962.

In view of the needs of the business of this Company and the purchase of the Otis lots and the construction of the improvements thereon, most of its available funds including the Treasury Bills had been utilized, but inspite of the said expenses the Company consistently declared dividends to its stockholders. The Treasury Bills were liquidated on February 15, 1962.'

Respondent found that the accumulated surplus in question were invested to 'unrelated business' which were not considered in the 'immediate needs' of the Company such that the 25% surtax be imposed therefrom."

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Petitioner appealed to the Court of Tax Appeals.

On the basis of the tabulated figures, *supra*, the Court of Tax Appeals found that the average percentage of cash dividends distributed was 85.77% for a period of 11 years from 1946 to 1957 and not only 40.33% of the total surplus available for distribution at the end of each calendar year actually distributed by the petitioner to its stockholders, which is indicative of the view that the Manila Wine Merchants, Inc. was not formed for the purpose of preventing the imposition of income tax upon its shareholders.[5]

With regards to the alleged substantial investment of surplus or profits in unrelated business, the Court of Tax Appeals held that the investment of petitioner with Acme Commercial Co., Inc., Union Insurance Society of Canton and with the Wack Wack Golf and Country Club are harmless accumulation of surplus and, therefore, not subject to the 25% surtax provided in Section 25 of the Tax Code.[6]

As to the U.S.A. Treasury Bonds amounting to P347,217.50, the Court of Tax Appeals ruled that its purchase was in no way related to petitioner's business of importing and selling wines, whisky, liquors and distilled spirits. Respondent Court was convinced that the surplus of P347,217.50 which was invested in the U.S.A. Treasury Bonds was availed of by petitioner for the purpose of preventing the imposition of the surtax upon petitioner's shareholders by permitting its earnings and profits to accumulate beyond the reasonable needs of business. Hence, the Court of Tax Appeals modified respondent's decision by imposing upon petitioner the 25% surtax for 1957 only in the amount of P86,804.38 computed as follows:

Unreasonable accumulation of surplus	P347,217.50
25% surtax due thereon	P 86,804.38[7]

[5] CTA Decision, pp. 9-11.

[6] *Ibid.*, pp. 12-13.

[7] *Ibid.*, pp. 18-20.

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On May 30, 1966, the Court of Tax Appeals denied the motion for reconsideration filed by petitioner on March 30, 1966. Hence, this petition.

Petitioner assigns the following errors:

I

The Court of Tax Appeals erred in holding that petitioner was availed of for the purpose of preventing the imposition of a surtax on its shareholders.

II

The Court of Tax Appeals erred in holding that petitioner's purchase of U.S.A. Treasury Bills in 1951 was an investment in unrelated business subject to the 25% surtax in 1957 as surplus profits improperly accumulated in the latter year.

III

The Court of Tax Appeals erred in not finding that petitioner did not accumulate its surplus profits improperly in 1957, and in not holding that such surplus profits, including the so-called unrelated investments, were necessary for its reasonable business needs.

IV

The Court of Tax Appeals erred in not holding that petitioner had overcome the prima facie presumption provided for in Section 25(c) of the Revenue Code.

V

The Court of Tax Appeals erred in finding petitioner liable for the payment of the surtax of P86,804.38 and in denying petitioner's Motion for Reconsideration and/or New Trial.

The issues in this case can be summarized as follows: (1) whether the purchase of the U.S.A. Treasury bonds by petitioner in 1951 can be construed as an investment to an unrelated business and hence, such was availed of by petitioner for the purpose of preventing the imposition of the surtax upon petitioner's shareholders by permitting its earnings and profits to accumulate beyond the reasonable needs of the business, and if so, (2) whether the penalty tax of twenty-five percent (25%) can be imposed on such improper accumulation in 1957 despite the fact that the accumulation occurred in 1951.

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The pertinent provision of the National Internal Revenue Code reads as follows:

"Sec. 25. *Additional tax on corporations improperly accumulating profits or surplus.*— (a) Imposition of Tax.- If any corporation, except banks, insurance companies, or personal holding companies whether domestic or foreign, is formed or availed of for the purpose of preventing the imposition of the tax upon its shareholders or members or the shareholders or members of another corporation, through the medium of permitting its gain and profits to accumulate instead of being divided or distributed, there is levied and assessed against such corporation, for each taxable year, a tax equal to twenty-five *per centum* of the undistributed portion of its accumulated profits or surplus which shall be in addition to the tax imposed by section twenty-four and shall be computed, collected and paid in the same manner and subject to the same provisions of law, including penalties, as that tax: *Provided*, that no such tax shall be levied upon any accumulated profits or surplus, if they are invested in any dollar-producing or dollar-saving industry or in the purchase of bonds issued by the Central Bank of the Philippines.

. . . . . .

(c) *Evidence determinative of purpose.*- The fact that the earnings of profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by clear preponderance of evidence, shall prove the contrary." (As amended by Republic Act No. 1823).

As correctly pointed out by the Court of Tax Appeals, inasmuch as the provisions of Section 25 of the National Internal Revenue Code were bodily lifted from Section 102 of the U.S. Internal Revenue Code of 1939, including the regulations issued in connection therewith, it would be proper to resort to applicable cases decided by the American Federal Courts for guidance and enlightenment.

A prerequisite to the imposition of the tax has been that the corporation be formed or availed of for the purpose of avoiding the income tax (or surtax) on its shareholders, or on the shareholders of any other corporation by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders. If the earnings and profits

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were distributed, the shareholders would be required to pay an income tax thereon whereas, if the distribution were not made to them, they would incur no tax in respect to the undistributed earnings and profits of the corporation.[8] The touchstone of liability is the purpose behind the accumulation of the income and not the consequences of the accumulation.[9] Thus, if the failure to pay dividends is due to some other cause, such as the use of undistributed earnings and profits for the reasonable needs of the business, such purpose does not fall within the interdiction of the statute.[10]

An accumulation of earnings or profits (including undistributed earnings or profits of prior years) is unreasonable if it is not required for the purpose of the business, considering all the circumstances of the case.[11]

In purchasing the U.S.A. Treasury Bonds, in 1951, petitioner argues that these bonds were so purchased (1) in order to finance their importation; and that a dollar reserve abroad would be useful to the Company in meeting urgent orders of its local customers and (2) to take care of future expansion including the acquisition of a lot and the construction of their office building and bottling plant.

We find no merit in the petition.

To avoid the twenty-five percent (25%) surtax, petitioner has to prove that the purchase of the U.S.A. Treasury Bonds in 1951 with a face value of $175,000.00 was an investment within the reasonable needs of the Corporation.

To determine the "reasonable needs" of the business in order to justify an accumulation of earnings, the Courts of the United States have invented the so-called "Immediacy Test" which construed the words "reasonable needs of the business" to mean the immediate needs of the business, and it was generally held

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[8] Mertens, Law of Federal Income Taxation, Vol. 7, Chapter 39, p. 44.

[9] *Ibid.*, p. 47.

[10] *Ibid.*, p. 45.

[11] Sec. 21, Revenue Regulations No. 2.

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that if the corporation did not prove an immediate need for the accumulation of the earnings and profits, the accumulation was not for the reasonable needs of the business, and the penalty tax would apply.[12] American cases likewise hold that investment of the earnings and profits of the corporation in stock or securities of an unrelated business usually indicates an accumulation beyond the reasonable needs of the business.[13]

The finding of the Court of Tax Appeals that the purchase of the U.S.A. Treasury bonds were in no way related to petitioner's business of importing and selling wines, whisky, liquors and distilled spirits, and thus construed as an investment beyond the reasonable needs of the business[14] is binding on Us, the same being factual.[15] Furthermore, the wisdom behind this finding cannot be doubted. The case of J.M. Perry & Co. *vs.* Commissioner of Internal Revenue,[16] supports the same. In that case, the U.S. Court said the following:

"It appears that the taxpayer corporation was engaged in the business of cold storage and warehousing in Yahima, Washington. It maintained a cold storage plant, divided into four units, having a total capacity of 490,000 boxes of fruits. It presented evidence to the effect that various alterations and repairs to its plant were contemplated in the tax years, . . .

It also appeared that in spite of the fact that the taxpayer contended that it needed to maintain this large cash reserve on hand, it proceeded to make various investments which had no relation to its storage business. In 1934, it purchased mining stock which it sold in 1935 at a profit of US $47,995.29. . . .

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[12] Mertens, *Law of Federal Income Taxation*, Vol. 7, Chapter 39, p. 103.

[13] Helvering *vs.* Chicago Stockyards Co., 318 US 693; Helvering *vs.* National Grocery Co., 304 US 282.

[14] Court of Tax Appeals' Decision, pp. 15-16.

[15] Renato Raymundo *vs.* Hon. De Joya, 101 SCRA 495; Comm. of Internal Revenue *vs.* Cadwallader Pacific Co., 73 SCRA 59; Vive Chemicals Products, Inc. *vs.* Comm., 60 SCRA 52; Nasiad *vs.* CTA, 61 SCRA 238; Aznar *vs.* CTA, 58 SCRA 519; Coca Cola Export Corp. *vs.* Comm., 56 SCRA 5; Comm. of Internal Revenue *vs.* Priscila Estate Inc., 11 SCRA 130.

[16] 120 F 2d 123.

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All these things may reasonably have appealed to the Board as incompatible with a purpose to strengthen the financial position of the taxpayer and to provide for needed alteration."

The records further reveal that from May 1951 when petitioner purchased the U.S.A. Treasury shares, until 1962 when it finally liquidated the same, it (petitioner) never had the occasion to use the said shares in aiding or financing its importation. This militates against the purpose enunciated earlier by petitioner that the shares were purchased to finance its importation business. To justify an accumulation of earnings and profits for the reasonably anticipated future needs, such accumulation must be used within a reasonable time after the close of the taxable year.[17]

Petitioner advanced the argument that the U.S.A. Treasury shares were held for a few more years from 1957, in view of a plan to buy a lot and construct a building of their own; that at that time (1957), the Company was not yet qualified to own real property in the Philippines, hence it (petitioner) had to wait until sixty percent (60%) of the stocks of the Company would be owned by Filipino citizens before making definite plans.[18]

These arguments of petitioner indicate that it considers the U.S.A. Treasury shares not only for the purpose of aiding or financing its importation but likewise for the purpose of buying a lot and constructing a building thereon in the near future, but conditioned upon the completion of the 60% citizenship requirement of stock ownership of the Company in order to qualify it to purchase and own a lot. The time when the company would be able to establish itself to meet the said requirement and the decision to pursue the same are dependent upon various future contingencies. Whether these contingencies would unfold favorably to the Company and if so, whether the Company would decide later to utilize the U.S.A. Treasury shares according to its plan, remains to be seen. From these assertions of petitioner, We cannot gather anything definite or certain. This, We cannot approve.

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[17] Mertens, *Ibid.*, p. 104.

[18] Exhibit "B".

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In order to determine whether profits are accumulated for the reasonable needs of the business as to avoid the surtax upon shareholders, the controlling intention of the taxpayer is that which is manifested at the time of accumulation not subsequently declared intentions which are merely the product of afterthought.[19] A speculative and indefinite purpose will not suffice. The mere recognition of a future problem and the discussion of possible and alternative solutions is not sufficient. Definiteness of plan coupled with action taken towards its consummation are essential.[20]

The Court of Tax Appeals correctly made the following ruling:[21]

"As to the statement of Mr. Hawkins in Exh. "B" regarding the expansion program of the petitioner by purchasing a lot and building of its own, we find no justifiable reason for the retention in 1957 or thereafter of the US Treasury Bonds which were purchased in 1951.

. . . . . .

"Moreover, if there was any thought for the purchase of a lot and building for the needs of petitioner's business, the corporation may not with impunity permit its earnings to pile up merely because at some future time certain outlays would have to be made. Profits may only be accumulated for the reasonable needs of the business, and implicit in this is further requirement of a reasonable time."

Viewed on the foregoing analysis and tested under the "immediacy doctrine," We are convinced that the Court of Tax Appeals is correct in finding that the investment made by petitioner in the U.S.A. Treasury shares in 1951 was an accumulation of profits in excess of the reasonable needs of petitioner's business.

Finally, petitioner asserts that the surplus profits allegedly accumulated in the form of U.S.A. Treasury shares in 1951 by it

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[19] Basilan Estates, Inc. *vs.* Comm. of Internal Revenue, 21 SCRA 17 citing Jacob Mertens, Jr., The Law of Federal Income Taxation, Vol. 7, Cumulative Supplement, p. 213; Smoot Sand & Gravel Corp. *vs.* Comm., 241 F 2d 197.

[20] Fuel Carriers, Inc. *vs.* US 202 F supp. 497; Smoot Sand & Gravel Corp. *vs.* Comm., *supra.*

[21] CTA Decision, p. 17.

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(petitioner) should not be subject to the surtax in 1957. In other words, petitioner claims that the surtax of 25% should be based on the surplus accumulated in 1951 and not in 1957.

This is devoid of merit.

The rule is now settled in Our jurisprudence that undistributed earnings or profits of prior years are taken into consideration in determining unreasonable accumulation for purposes of the 25% surtax.[22] The case of Basilan Estates, Inc. *vs.* Commissioner of Internal Revenue,[23] further strengthen this rule, and We quote:

"Petitioner questions why the examiner covered the period from 1948-1953 when the taxable year on review was 1953. The surplus of P347,507.01 was taken by the examiner from the balance sheet of the petitioner for 1953. To check the figure arrived at, the examiner traced the accumulation process from 1947 until 1953, and petitioner's figure stood out to be correct. There was no error in the process applied, for previous accumulations should be considered in determining unreasonable accumulation for the year concerned. 'In determining whether accumulations of earnings or profits in a particular year are within the reasonable needs of a corporation, it is necessary to take into account prior accumulations, since accumulations prior to the year involved may have been sufficient to cover the business needs and additional accumulations during the year involved would not reasonably be necessary.'"

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the Court of Tax Appeals is AFFIRMED *in toto*, with costs against petitioner.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Abad Santos, De Castro and *Escolin, JJ.*, concur.

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[22] Sec. 21, Revenue Regulations No. 2.

[23] 21 SCRA 27.