102 Phil. 140

[G.R. No. L-9996. October 15, 1957]

EUFEMIA EVANGELISTA, MANUELA EVANGELISTA AND FRANCISCA EVANGELISTA, PETITIONERS, VS. THE COLLECTOR OF INTERNAL REVENUE AND THE COURT OP TAX APPEALS, RESPONDENTS.

D E C I S I O N

CONCEPCION, J.:

This is a petition, filed by Eufemia Evangelista, Manuela Evangelista and Francisca Evangelista, for review of a decision of the Court of Tax Appeals, the dispositive part of which reads:

> "For all the foregoing, we hold that the petitioners are liable for the income tax, real estate dealer's tax and the residence tax for the years 1945 to 1949, inclusive, in accordance with the respondent's assessment for the same in the total amount of P6,878.34, which is hereby affirmed and the petition for review filed by petitioners is hereby dismissed with costs against petitioners."

It apears from the stipulation submitted by the parties:

> "1. That the petitioners borrowed from their father the sum of P59,140.00 which amount together with their personal monies was used by them for the purpose of buying real properties,

"2. That on February 2, 1943 they bought from Mrs. Josefina Florentino a lot with an area of 3,718.40 sq, m. including: improvements thereon for the sum of P100,000.00; this property has an assessed value of P57,517.00 as of 1948;

"3. That on April 3, 1944 they purchased from Mrs. Josefa Oppus 21 parcels of land with an aggregate area of 3,718.40 sq. m. including improvements thereon for P18,000.00; this property has an assessed value of P8,255.00 as of 1948;

"4, That on April 23, 1944 they purchased from the Insular Investments, Inc., a lot of 4,353 sq. m. including improvements thereon for P108,825.00. This property has an assessed value of P4,983.00 as of 1948;

"5. That on April 28, 1944 they bought from Mrs. Valentin Afable a lot of 8,371 sq. m. including improvements thereon for P237.234.14. This property has an assessed value of P59,140.00 as of 1948;

"6. That in a document dated August 16, 1945, they appointed their brother Simeon Evangelista to 'manage their properties with full power to lease; to collect and receive rents; to issue receipts therefor; in default of such payment, to bring' suits against the defaulting tenant; to sign all letters, contracts, etc., for and in their behalf, and to endorse and deposit all notes and checks for them;

"7. That after having bought the above-mentioned real properties, the petitioners had the same rented or leased to various tenants;

"8. That from the month of March, 1945 up to and including December, 1945, the total amount collected as rents on their real properties was P9,599.00 while the-expenses amounted to P3.650.00 thereby leaving them a net rental income of

P5,948.33;

"9. That in 1940, they realized a gross rental income in the sum of P24,786.30, out of which amount was deducted the sum of P16,288.27 for expenses thereby leaving them a net rental income of P7,498.13;

"10. That in 1948 they realized a gross rental income of P17,453.00 out of the which amount was deducted the sum of P4,837.65 as expenses, thereby leaving them a net rental income of P12,615.35."

It further appears that on September 24, 1954, respondent Collector of Internal Revenue demanded the payment, of income tax on corporations, real estate dealer's fixed tax and corporation residence tax for the years 1945-1949, computed, according to the assessments made by said officer, as follows:

Income Taxes		
1945	..... P614.84	
1946	..... 1,144.71	
1947	..... 910.34	
1948	..... 1,912.30	
1949	..... 1,575.90	
	Total including surcharge and compromise	P6,157.09
	Real Estate Dealer's Fixed Tax	
1946	..... P37.50	
1947	..... 150.00	
1948	..... 150.00	
1949	..... 150.00	
	Total including penalty.....	P527.50
	Residence Taxes of Corporation	

1945	..... P38.75	
1946	..... 38.75	
1947	..... 38.75	
1948	..... 38.75	
1949	..... 38.75	
	Total including surchage.....	P193.75
	Total Taxes Due	6,878.34

Said letter of demand and the corresponding assessments were delivered to petitioners on December 8, 1954, whereupon they instituted the present case in the Court of Tax Appeals, with a prayer that "the decision of the respondent contained in. his letter of demand dated September 24, 1954" be reversed, and that they be absolved from the payment of the taxes in question, with costs against the respondent.

After appropriate proceedings, the Court of Tax Appeals rendered the above-mentioned decision for the respondent, and, a petition for reconsideration and new trial having been subsequently denied, the case is now before Us for review at the instance of the petitioners.

The issue in this case is whether petitioners are subject to the tax on corporations provided for in section 24 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, as well as to the residence tax for corporations and the real estate dealers' fixed tax. With respect to the tax on corporations, the issue hinges on the meaning of the terms "corporation" and "partnership", as used in sections 24 and 84 of said Code, the pertinent parts of which read:

> "Sec. 24. *Rate of tax on corporations*.—There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized but not including duly registered general co-partnerships (*compañias colectivas*), a tax upon such income equal to the sum of the following: * * *."

> "Sec. 84(b). The term 'corporation' includes partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations or insurance companies, but does not include duly registered general copartnerships (*compañias colectivas*)"

Article 1767 of the Civil Code of the Philippines provides :

> "By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing1 the profits among- themselves."

Pursuant to this article, the essential elements of a partnership are two, namely: (a) an agreement to contribute money, property or industry to a common fund; and (b) intent to divide the profits among the contracting parties. The first element is undoubtedly present in the case at bar, for, admittedly, petitioners have agreed to, and did, contribute money and property to a common fund. Hence, the issue narrows down to their intent in acting as they did. Upon consideration of all the facts and circumstances surrounding the case, we are fully satisfied that their purpose was to engage in real estate transactions for monetary gain and then divide the same among themselves, because:

1. Said common fund was not something they found already in existence. It was not a property inherited by them *pro indiviso*. They created it purposely. What is more they *jointly borrowed* a substantial portion thereof in order to establish said common fund.

2. They invested the same, not merely in one transaction, but in a *series* of transactions. On February 2, 1943, they bought a lot for P100,000.00. On April 3, 1944, they purchased 21 lots for P18,000.000. This was soon followed, on April 23, 1944, by the acquisition of another real estate for P108,825.00. Five (5) days later (April 28, 1944), they got a fourth lot for P237,234.14. The number of lots (24) acquired and transactions undertaken, as well as the brief interregnum between each, particularly the last three purchases, is strongly indicative of a pattern or common design that was not limited to the conservation and preservation of the aforementioned common fund or even of the property acquired by petitioners in February, 1943. In other words, one cannot but perceive a character of *habituality* peculiar to *business* transactions engaged in for purposes of gain.

3. The aforesaid lots were not devoted to residential purposes, or to other personal uses, of petitioners herein. The properties were leased separately to several persons, who, from 1945 to 1948 inclusive, paid the total sum of P70,068.30 by way of rentals. Seemingly, the lots are still being so let, for petitioners do not even suggest that there has been any change in the utilization thereof.

4. Since August, 1945, the properties have been under the management of one person, namely, Simeon Evangelista, with full power to lease, to collect rents, to issue receipts, to bring suits, to sign letters and contracts, and to indorse and deposit notes and checks. Thus, the affairs relative to said properties have been handled as if the same belonged to a corporation or business enterprise operated for profit.

5. The foregoing conditions have existed for more than ten (10) years, or, to be exact, over fifteen (15) years, since the first property was acquired, and over twelve (12) years, since Simeon Evangelista became the manager.

6. Petitioners have not testified or introduced any evidence, either on their purpose in creating the set up already adverted to, or on the causes for its continued existence. They did not even try to offer an explanation therefor.

Although, taken singly, they might not suffice to establish the intent necessary to constitute a partnership, the collective effect of these circumstances is such as to leave no room for doubt on the existence of said intent in petitioners herein. Only one or two of the aforementioned circumstances were present in the cases cited by petitioners herein, and, hence, those cases are not in point.

Petitioners insist, however, that they are mere co-owners, not copartners, for, in consequence of the acts performed by them, a legal entity, with a personality independent of that of its members, did not come into existence, and some of the characteristics of partnerships are lacking in the case at bar. This pretense was correctly rejected by the Court of Tax Appeals.

To begin with, the tax in question is one imposed upon “corporations”, which, strictly speaking, are distinct and different from “partnerships”. When our Internal Revenue Code includes “partnerships” among the entities subject to the tax on “corporations”, said Code must allude, therefore, to organizations which are *not necessarily* “partnerships”, in the technical sense of the term. Thus, for instance, section 24 of said Code *exempts* from the aforementioned tax “duly registered general partnerships”, which constitute precisely one

of the most typical forms of partnerships in this jurisdiction. Likewise, as defined in section 84(6) of said Code, "the term corporation includes partnerships, *no matter how created or organized*." This qualifying expression clearly indicates that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one couid be deemed constituted for purposes of the tax on corporations. Again, pursuant to said section 84(6), the term "corporation" includes, among other, "joint accounts, (*cuentas en participation*)" and "associations", *none of which his a legal personality of its own, independent of that of its members*. Accordingly, the lawmaker could not have regarded that personality as a condition essential to the existence of the partnerships, therein referred to. In fact, as above stated, "duly registered general copartnerships"—*which are possessed of the aforementioned personality*—have been expressly *excluded* by law (sections 24 and 84 [6]) from the connotation of the term "corporation." It may not be amiss to add that petitioners' allegation to the effect that their liability in connection with the leasing of the lots above referred to, under the management of one person—even if true, on which we express no opinion—tends to *increase* the similarity between the nature of their venture and that of corporations, and is, therefore, an additional argument *in favor* of the imposition of said tax on corporations.

Under the Internal Revenue Laws of the United States, "corporations" are taxed differently from "partnerships". By specific provision of said laws, such "corporations" include "associations, joint-stock companies and insurance companies." However, the term "association" is not used in the aforementioned laws

> "* * * in any narrow or technical sense. It includes any organization, created for the transaction of designated affairs, or the attainment of some object, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are *conducted by a single individual*, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint-stock corporation or company, a 'business* trusts a 'Massachusetts' trust, a 'common law' trust, and 'investment' trust (whether of the fixed or the management type), an interinsurance exchange operating through an attorney in fact, a partnership association, and any other type of organization (by whatever

> name known) which is not, within the meaning oi' the Code, a, trust or an estate, or a partnership." (7A Merten's Law of Federal Income Taxation, p. 788; italics ours.)

Similarly, the American Law.

> "* * * provides *its own concept* of a partnership. Under the term 'partnership' it includes *not only* a partnership as known at common law but, as well, a syndicate, group, pool, *joint venture, or other unincorporated organization which carries on any business, financial operation, or venture*, and which is not, within the meaning of the Code, a trust, estate, or a corporation. * * *." (7A Merten's Law of Federal Income Taxation, p, 789; italics ours.)

> "The term 'partnership' includes a syndicate, group, pool, *joint venture or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on*, * * *." (8 Merten's Law of Federal Income Taxation, p. 562 Note 63; italics ours.)

For purposes of the tax on corporations, *our National Internal Revenue Code, includes these partnerships*—with the exception only of duly registered general copartnerships—*within the purview of the term "corporation*." It is, therefore, clear to our mind that petitioners herein constitute a partnership, insofar as said Code is concerned, and are subject to the income tax for corporations.

As regards the residence tax for corporations, section 2 of Commonwealth Act No. 465 provides in part:

> "*Entities liable to residence tax*.—Every corporation, *no matter how created or organized*, whether domestic or resident foreign, engaged in or doing business in the Philippines shall pay an annual residence tax of five pesos and an annual

> additional tax which, in no case, shall exceed one thousand pesos, in accordance with the following schedule: * * *.
>
> "The term 'corporation' as used in this Act includes joint-stock company, *partnership*, joint account (*cuentas en participacion*), association or insurance company, *no matter how created or organized*." (italics ours.)

Considering that the pertinent part of this provision is analogous to that of sections 24 and 84 (b) of our National Internal Revenue Code (Commonwealth Act No. 466), and that the latter was approved on June 15, 1939, the day immediately after the approval of said Commonwealth Act No. 465 (June 14, 1939), it is apparent that the terms "corporation" and "partnership" are used in both statutes with substantially the same meaning. Consequently, petitioners are subject, also, to the residence tax for corporations.

Lastly, the records show that petitioners have habitually engaged in leasing the properties above mentioned for a period of over twelve years, and that the yearly gross rentals of said properties from 1945 to 1948 ranged from P9,599 to P17,453. Thus, they are subject to the tax provided in section 193 (q) of our National Internal Revenue Code, for "real estate dealers," inasmuch as, pursuant to section 194(s) thereof:

> " 'Real estate dealer' includes any person engaged in the business of buying, selling, exchanging, *leasing, or renting property or his own account as principal* and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of three thousand pesos or more a year. * * *." (Italics ours.)

Wherefore, the appealed decision of the Court of Tax Appeals is hereby affirmed with costs against the petitioners herein. It is so ordered.

Paras, C.J., Bengzon, Padilla, Reyes, A., Reyes, J.B.L., Endencia and *Felix, JJ.*, concur.

CONCURRING OPINION

Bautista Angelo, *J.*:

I agree with the opinion that petitioners have actually contributed money to a common fund with express purpose of engaging in real estate business for profit. The series of transactions which they had undertaken attest to this. This appears in the following portion of of the decision:

> "2. They invested the same, not merely in one transaction, but in a series of transactions. On February 2, 1943, they bought a lot for ("100,000. On April 3, 1944, they purchased 21 lots for P18,000. This was soon Hollowed on April 28, 3944, by the acquisition ox another real estate for P108,825. Five (B) days later (April 28, 1944), they got a fourth lot for P287.234.14. The number of lots (24) acquired and transactions undertaken, as "well as the brief' interregnum between each, particularly the last three purchases, is strongly indicative of a pattern or common design that was not limited to the conservation and preservation of thy afore-mentioned common fund or even of the property acquired by petitioner in February, 1943. In other words, one cannot but perceive a character of *habituality* peculiar to *business* transactions engaged in for purposes of gain."

I wish however to make the following observation: Article 1769 of the new Civil Code lays down the rule for determining when a transaction should be deemed a partnership or a co-ownership. Said article paragraphs 2 and 3, provides:

> "(2) Co-ownership or co-possession does not of itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property;

> "(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;"

From the above it appears that the fact that those who agree to form a co-ownership share or do not share any profits made by the use of the property held in common does not convert their venture into a partnership. Or the sharing of the gross returns does not of itself establish a partnership whether or not the persons sharing therein have a joint or common right or interest in the property. This only meaii3 that, aside from the circumstance of profit, the presence of other elements constituting partnership is necessary, such as the clear intent to form a partnership, the existence of a juridical personality different from that of the individual partners, and the freedom to transfer or assign any interest in the property by one with the consent of the others (Padilla, Civil Code of .the Philippines Annotated, Vol. I, 1953 ed., pp. 635-686).

It is evident that an isolated transaction whereby two or more persons contribute funds to buy certain real estate for profit in the absence of other circumstances showing a contrary intention cannot be considered a partnership.

> "Persons who contribute property or funds for a common enterprise and agree to share the gross returns of that enterprise in proportion, to their contribution, but who severally retain the title to their respective contribution, arc not thereby rendered partners. They have no common stock or capital, and no community of interest as principal proprietors in the business itself which the proceeds derived." (Elements of the law of Partnership by Floyd R. Mechem, 2n Ed., section 83, p. 74.)

> "A joint purchase of land, by two, does not constitute a copartnership in respect thereto; nor does an agreement to share the profits and losses on the sale of land create a partnership; the parties are only tenants in common." (Clark vs. Sideway, 142 U. S. 882, J.2 S. Ct. 327, 35 L. Ed., 1157.)

> "Where plaintiff, his brother, and another agreed to become owners of a single tract of realty, holding aa tenant?: in common, and to divide the profits of disposing of it, the brother and the other not being entitled to share in plaintiff's commissions, no partnership existed as between the three parties, whatever their relation may have been as to third parties." (Magee vs. Magee, 123 N. E. 673, 233 Mass. 341.)

> "In order to constitute a partnership inter sese there must be: (a) An intent to form the same; (b) generally a participating in both profits and losses; (c) and such a community of interest, as far .as third persons are concerned as enables each party to make contract, manage the business, and dispose of the whole property." (Municipal Paving Go. vs Herring:, 150 P. 1067, 50 111. 470.)

> "The common ownership of property does not itself create a partnership between the owners, though, they may use it for purpose of making gains; and they may, without becoming partners, agree among themselves as to the management and use of such property and the application of the proceeds therefrom." (Spurlock vs. Wilson, 142 S. W. 363, 160 No. App. 14.)

This is impliedly recognized in the following portion of the decision: "Although, taken singly, they might not suffice to establish the intent necessary to constitute a partnership, the collective effect of these circumstances (referring to the series of transactions) such as to leave no room, for doubt on the existence of said intent in petitioners herein."

Decision affirmed.

Date created: April 23, 2015