

FLORENCIO REYES AND ANGEL REYES, PETITIONERS, VS. COMMISSIONER OF INTERNAL REVENUE AND HON. COURT OF TAX APPEALS, RESPONDENTS.

G.R. Nos. L-24020-21. July 29, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

Petitioners in this case were assessed by respondent Commissioner of Internal Revenue the sum of P46,647.00 as income tax, surcharge and compromise for the years 1951 to 1954, an assessment subsequently reduced to P37,528. 00. This assessment sought to be reconsidered successfully was the subject of an appeal to respondent Court of Tax Appeals. Thereafter, another assessment was made against petitioners, this time for back income taxes plus surcharge and compromise in the total sum of P25,973.75, covering the years 1955 and 1956. There being a failure on their part to have such assessments reconsidered, the matter was like-wise taken to the respondent Court of Tax Appeals. The two cases[1] involving as they did identical issues and ultimately traceable to facts similar in character were heard jointly with only one decision being rendered.

In that joint decision of respondent Court of Tax Appeals, the tax liability for the years 1951 to 1954 was reduced to P37,128. 00 and for the years 1955 and 1956, to P20,619.00 as income tax due "from the partnership formed" by petitioners.[2] The reduction was due to the elimination of surcharge, the failure to file the income tax return being accepted as due to petitioners honest belief that no such liability was incurred as well as the compromise penalties for such failure to file.[3] A reconsideration of the aforesaid decision was sought and denied by respondent Court of Tax Appeals. Hence this petition for review.

The facts as found by respondent Court of Tax Appeals, which being supported by substantial evidence, must be respected[4] follow: "On October 31, 1950, petitioners, father and son, purchased a lot and building, known as the Gibbs Building, situated at 671 Dasmariñas Street, Manila, for P835, C00.00, of which they paid the sum of P375,000.00, leaving a balance of P460, 000. 00, repre-senting the mortgage obligation of the vendors with the China Banking Corporation, which mortgage obligations was assumed by the vendees. The initial payment of P375,000.00 was shared equally by petitioners At the time of the purchase, the building was leased to various tenant whose rights under the lease contracts with the original owners the purchasers, petitioners herein, agreed to respect. The administra-tion of the building was entrusted to an administrator who collected the rents; kept its books and records and rendered statements of accounts to the owners; negotiated leases; made necessary repairs and disbursed payments, whenever necessary, after approval by the owners; and performed such other functions necessary for the conservation and preservation of the building. Petitioners divided equally the income derived from the building after deducting the expenses of operation and maintenance. The gross income from rentals of the building amounted to about P90, 000. 00 annually."[5]

From the above facts, the respondent Court of Tax Appeals applying the appropriate provisions of the National Internal Revenue Code, the first of which imposes an income tax on corporations "organized in, or existing under

the laws of the Philippines, no matter how created or organized but net including duly registered general co-partnerships (*compañías colectivas*), * * *, "[6] a term, which according to the second provision cited, includes partnerships "no matter how created or organized, * * *, "[7] and applying the leading case of *Evangelista v. Collector of Internal Revenue*,[8] sustained the action of respondent Commissioner of Internal Revenue but reduced the tax liability of petitioners, as previously noted.

Petitioners maintain the view that the *Evangelista* ruling does not apply; for them, the situation is dissimilar. Consequently, they allege that the reliance by respondent Court of Tax Appeals was un-warranted and the decision should be, set aside. If their interpretation of the authoritative doctrine therein se forth commands assent, then clearly what respondent Court of Tax Appeals did fails to find shelter in the law. That is the crux of the matter. A perusal of the *Evange-lista* decision is therefore unavoidable.

As noted in the opinion of the Court, penned by the present Chief Justice, the issue was 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, * * *. [9] After referring to another section of the National Internal Revenue Code, which explicitly provides that the term corporation "includes partnerships" and then to Article 1767 of the Civil Code of the Philip-pines, defining what a Contract of partnership is, the opinion goes on to state that "the essential elements of 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 contract-ing 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, * * *. "[10]

In support of the above conclusion, reference was made to the following circumstances, namely, the common fund being created purposely not something already found in existence, the' investment of the same not merely in one transaction but in a series of transactions; the lots thus acquired not being devoted to residential purposes or to other personal uses of petitioners in that case; such properties having been under the management of one person with full power to lease, to collect rents, to issue receipts, to bring suits, to sign letters and contracts and to endorse notes and checks; the above conditions having existed for more than 10 years since the acquisition of the above properties; and no testimony having been introduced as to the purpose "in creating the set up already adverted to, or on the causes for its continued existence." [11] The conclusion that emerged had all the imprint of inevitability. Thus: "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." [12]

It may be said that there could be a differentiation made between the circumstances above detailed 'and those existing in the present case. It does not suffice though to preclude the applicability of the *Evangelista* decision. Petitioners could harp on these being only one transaction. They could stress that an affidavit of one of them found in the Bureau of Internal Revenue records would indicate that their intention was to house in the building acquired by them the respective enterprises, coupled with a plan of effecting a division in 10 years. It is a little surprising then that while the purchase was made on October 31, 1950 and their brief as petitioners filed on October 20, 1965, almost 15 years later, there was no allegation that such division as between them was in fact made. Moreover, the facts as found and as submitted in the brief made clear that the building in question continued to be leased by other parties with petitioners dividing "equally the income 4' * * * after deducting the expenses of operation and maintenance * * *." [13] Differences of such slight significance do not call for a different ruling.

It is obvious that petitioners' effort to avoid the controlling force of the *Evangelista* ruling cannot be deemed

successful. Respondent Court of Tax Appeals acted correctly. It yielded to the command of an authoritative decision; it recognized its binding character. There is clearly no merit to the second error assigned by petitioners, who would deny its applicability to their situation.

The first alleged error committed by respondent Court of Tax Appeals in holding that petitioners, in acquiring the Gibbs Building, established a partnership subject to income tax as a corporation under the National Internal Revenue Code is likewise untenable. In their discussion in their brief of this alleged error, stress is laid on their being co-owners and not partners. Such an allegation was likewise, made in the Evangelista case.

This is the way it was disposed of in the opinion of the present Chief Justice: "This pretense was correctly rejected by the Court of Tax Appeals." [14] Then came the explanation why: "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(b) 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 could be deemed constituted for purposes of the tax on corporations. Again, pursuant to said section 84(b), the term 'corporation' includes, among other, 'joint accounts, (cuentas en participacion)' and 'associations' none of which has personality of its own, 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 [b] from the connotation of the term 'corporation'." [15] The opinion went on to summarize the matter aptly: "For purposes of the tax on corporations, our National Internal Revenue Code, include these partnerships - with the exception only of duly registered general co-partnerships - 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." [16]

In the light of the above, it cannot be said that the respondent Court of Tax Appeals decided the matter incorrectly. There is no warrant for the assertion that it failed to apply the settled law to uncontroverted facts. Its decision cannot be successfully assailed. Moreover, an observation made in *Alhambra Cigar & Cigarette Manufacturing Co. v. Commissioner of Internal Revenue*, [17] is well-worth recalling. Thus: "Nor as a matter of principle is it advisable for this Court to set aside the conclusion reached by an agency such as the Court of Tax Appeals which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless, as did not happen here, there has been an abuse or improvident exercise of its authority."

WHEREFORE, the decision of the respondent Court of Tax Appeals ordering petitioners "to pay the sums of P37,128. 00 as income tax due from the partnership formed by herein petitioners for the years 1951 to 1954 and P20,619.00 for the years 1955 and 1956 within thirty days from the date this decision becomes final, plus the corresponding surcharge and interest in case of delinquency, " is affirmed. With costs against petitioners.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

[1] CTA Cases No. 518 and No. 519.

[2] Annex A, Brief for Petitioners, p. 39.

[3] Ibid, p. 38.

[4] Alhambra Cigar & Cigarette Mfg. Co. v. Commissioner of Internal Revenue, L-23226, November 28, 1967, citing Sanchez v. Commissioner of Customs, 102 Phil. 37 (1957); Castro v. Collector of Internal Revenue, L-12174; April 26, 1962; Commissioner of Internal Revenue v. Priscilla Estate, Inc., L-18282, May 29, 1964; Philippine Guaranty Co., Inc. v. Commissioner of Internal Revenue, L-22074, September 6, 1965; Yupangco & Sons v. Commissioner of Customs, L-22259, January 19, 1966; Republic v. Razon & Jai Alai Corp., L-17462, May 29, 1967; Balbas v. Domingo, L-19804, October, 23, 1967.

[5] Annex A, Brief for Petitioners, pp. 33-34.

[6] Section 24, National Internal Revenue Code.

[7] Section 84(b), id.

[8] 102 Phil. 140 (1957).

[9] Ibid, p. 144.

[10] Ibid, pp. 144-145.

[11] Ibid, pp. 145-146.

[12] Ibid, p. 146.

[13] Brief for Petitioners, p. 6.

[14] Evangelista v. Collector of Internal Revenue, 102 Phil. 140, 146 (1957).

[15] Ibid, pp. 146-147, In support of the above view, excerpts from Merten's Law of Federal Income Taxation, Vol. 7A, pp. 788-789 and Vol. 8, p. 562 were cited.

[16] Ibid, p. 148.

[17] L-23226, November 28, 1967.

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