

TAN TIONG BIO, ET AL., PETITIONERS, VS. BUREAU OF INTERNAL REVENUE, RESPONDENT.*G.R. No. L-8800. October 23, 1956*

Ponente: REYES, J.B.L., J.

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It appears that on or about October 21, 1946, the Central Syndicate, a corporation organized for the limited period of two years, addressed a letter to the Collector of Internal Revenue advising the latter of a sale of said corporation by one Dee Hong Lue of surplus properties purchased by the vendor from the Foreign Liquidation Commission, with the condition that the vendee corporation would pay the 3 1/2 % sales tax on such surplus properties in the name and in behalf of the vendor Dee Hong Lue. In the same letter, the Syndicate deposited with the Collector the amount of P43,750.00 to answer for the sales tax collectible on the purchase, but representing that Dee Hong Lue expected a refund from the U.S. Government on the original purchase price because of non-delivery of various items included in the contract, and that therefore, the original sales tax due on the sales price was subject to readjustment and reduction.

Subsequently, on January 31, 1948, Dee Hong Lue, through counsel, wrote the Collector advising him that the Foreign Liquidation Commission had given him a refund of P31,522.18 on the purchase price of the aforesaid surplus properties, and requesting for the refund of an alleged overpayment of sales tax in the amount of P1,103.28. The Collector ordered the case investigated; and four years later, or on January 4, 1952, informed Dee Hong Lue of the denial of his request for tax refund. On the same day, the Collector wrote the Central Syndicate, informing it that the investigation made by the Bureau revealed that it was the Syndicate and not Dee Hong Lue that had actually purchased the surplus goods in question (commonly known as the "Mystery Pile") from the Foreign Liquidation Commission; that the properties were invoiced in the name of Dee Hong Lue in trust for the Syndicate because it was then only in the process of incorporation; and that the Syndicate, after it had been organized, made it appear that the goods were sold to it by Dee Hong Lue, to evade payment of sales tax on its selling prices to the public; and assessed the Syndicate a deficiency sales tax of P27,038.30 and 25% surcharge of P6,759.58 or a total sum of P33,797.88, plus the amount of P300.00 as penalty. Because of the refusal of the Syndicate to pay the deficiency assessment, and the findings of the Bureau that the corporation had no existing properties to satisfy the assessment, the Collector wrote David Sycip and Yu Khe Thai, manager and president, respectively, of the Syndicate, to pay the corporation's tax liability or else be held criminally liable under the Internal Revenue Code. Ultimately, on August 5, 1954, the Collector issued a final definitive ruling reaffirming the deficiency assessment against the Syndicate, from which ruling the latter appealed to the Court of Tax Appeals.

In the Court of Tax Appeals, the Solicitor-General moved for the dismissal of the appeal on the ground that the appellant Central Syndicate no longer had the capacity to Sue because its term of existence had expired on August 15, 1948, as shown by its Articles of Incorporation attached to the motion to dismiss. The appellant Syndicate opposed the motion, alleging that although the corporation had gone defunct, its officers and directors not only

stood liable for the assessment but had also been threatened to be held criminally liable therefor; and offered to be substituted as appellants. After hearing the arguments of both parties, the respondent Court of Tax Appeals issued a resolution dismissing the appeal, on the ground that whatever judgement it would render in favor of the Government would be unenforceable against the appellant because it is a non-existing entity. From this resolution, the appellant Syndicate appealed to us on petition for review.

It is true that sections 77 and 78 of our Corporation Law contemplate that corporate existence can be prolonged only for three years from and after the termination of the corporate term, for the purpose of winding up its affairs; and in the case of the Central Syndicate, the three years expired in 1951. On this basis, if it be true that the Syndicate thereafter had no personality to dispute the assessment, it would be equally true that no valid assessment could be imposed on a corporation that no longer had juridical personality.

In any event, the government can not insist on making a tax assessment against a corporation that no longer exists and then turn around and oppose the appeal questioning the legality of the assessment precisely on the ground that the corporation is non-existent, and has no longer capacity to sue. The government can not adopt inconsistent stands and thereby deprive the officers and directors of the defunct corporation of the remedy to question the validity and correctness of the assessment for which, if sustained, they would be held personally liable as successors-in-interest to the corporate property.

We therefore agree with appellant that its appeal should not have been dismissed but 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 in so far 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.

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. Without costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

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