

THE CITY LUMBER, INC., PETITIONER, VS. THE HON. MELECIO R. DOMINGO AND THE HON. COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-18611. January 30, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petitioner Seeks the review of a decision of the Court of Tax Appeals, upholding an assessment by respondent on an additional income of P16,678.63 representing minor deductions from the alleged expenses on undisclosed sales of plywood, nails and GI sheets amounting to P7,902.07, and on a cash credit balance of P7,898.80. Petitioner claims that the respondent court erred in not holding that the plywood and GI sheets were actually lost in a fire occurring in the city and in not considering the credit cash balance as a loan secured by petitioner.

On the first issue petitioner introduced as a witness in his favor the Chief of Police of the City of Dumaguete to testify on the existence of a fire in the city by reason of which the store of petitioner was looted of plywood and kegs of nails. But said witness declared that they recovered only 100 pieces of plywood and 5 kegs of nails, but that these were returned to petitioner. The Court below, however, rejected the alleged loss of plywood because said loss was never reported in the books of petitioner; and neither was such loss reported in the income tax return of petitioner for the year, submitted some months after the alleged loss.

We hold that the conduct of petitioner in not reporting said loss in his book of account or in his income tax return proves that the alleged loss had not been suffered.

On the alleged loan of the sum of around P8,000.00 which petitioner claims to be the cash credit balance appearing in his book of account, petitioner's book of account failed to show such a loan also. Neither were any receipts or other evidence produced to show that said amount was a loan secured by petitioner, or that a loan was ever secured. In view of these We find that the respondent court did not commit the error charged.

The third error is the alleged violation of an order of the Commissioner granting Regional Directors authority to close tax easements involving deficiency assessments not exceeding P10,000.00 in taxes and penalties; for it appears that after a re-investigation of the tax liability of petitioner by the corresponding regional director the latter reviewed the case and reduced the assessment from P5,028.00 to P176,000. The order in question (Memorandum Order No. V-634 dated July 3, 1956) was applicable only to subordinate officers of the Bureau of Internal Revenue and could not bind the Commissioner himself, who has been entrusted by law to make final assessments. The Commissioner cannot delegate this power to make a final assessment to his subordinate. *Delegatus non potest delegare*; the person to whom an office or duty is delegated cannot lawfully devolve the duty on another. The existence of the alleged error is, therefore, denied.

Wherefore, the decision is hereby affirmed, with costs. So ordered.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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