

REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. BLAS GONZALES DEFENDANT-APPELLANT.

G.R. No. L-17962. April 30, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the decision of the Court of First Instance of Manila under Civil Case No. 42912 the dispositive portion of which provided:

"In view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering said defendant to pay plaintiff the sums of P106, 226.75 and P37,849.58 as deficiency income taxes for the years 1946 and 1947, respectively, (each inclusive of the 50% surcharge, plus the 50% surcharge and 1% monthly Interest on the aforesaid amount from June 15, 1957 until the whole amount is fully paid, and cost of this suit."

The records of this case disclose that since 1946, the defendant-appellant, Bias Gonzales, has been a private concessionaire in the U.S. Military Base at Clark Field, Angeles City. He was engaged in the manufacture of furniture and, per agreement with the base authorities, supplied them with his manufactured articles.

On March 1, 1947 and March 1, 1948, the appellant filed an income tax returns for the years 1946 and 1947, respectively, with the then Municipal Treasurer of Angeles, Pampanga. In the return for 1946, he declared a net income of P9, 352.84 and income tax liability at P111.17 while for the year 1947, he declared as net income the amount of P16,829.10 and a tax liability therefor in the sum of P1, 395.95. In the above two returns, he declared the sums of P80,459.75 and P1,707,355.57 as his total sales for the said two years, respectively, or an aggregate sales of P1,787,848.32 for both years.

Upon investigation, however, the Bureau of Internal Revenue discovered that for the years 1946 and 1947, the appellant had been paid a total of P2,199,920.50 for furniture delivered by him to the base authorities. The appellant does not deny the above amount which, for the record, was furnished by the Purchasing Officer of the Clark Field Air Base on the Bureau of Internal Revenue's representation.

Compared against the sales figure provided by the base authorities, therefore, the amount of P1, 787, 848.32 declared by the appellant as his total sales for the two tax years in question was short or underdeclared by some P412,072.18. Accordingly, the appellee considered this last mentioned amount as unreported item of income of the appellant for 1946. Further investigation into the appellant's 1946 profit and loss statement disclosed "local sales," that is, sales to persons other than the United States Army, in the amount of P124,510.43. As a result, the appellee likewise considered the said amount as unreported income for the said year. The full amount of P124,510.43 was considered as taxable income because the appellant could not produce the books of account on the same upon which any deduction could be based.

Adding up the above two items considered as unreported income, the appellee assessed the appellant the total sum of P340,179.84, broken down as follows:

Net income as per return

P 9,352.84

Add: Sales to US Army

P492,531.93

Local Sales

124510.43

536,582.61

Net income as per investigation

545,935.45

Less: Personal & additional exemptions

4,500.000

Net taxable income

P541,435.45

Tax due thereon

P226,897.73

Less: Tax already assessed

111.17

Deficiency tax due

P226,786.56

50% surcharge

113,393.28

TOTAL AMOUNT DUE & COLLECTIBLE

P340,179.84

On November 14, 1953, the Bureau of Internal sent a letter of demand to the appellant for the above amount as deficiency income tax, the sum of P300.00 as com-promise for his failure to keep the required journal and ledger, and finally, the sum of P153.75 as additional residence tax, all for the year 1946.

On March 31, 1954, on request of the appellant, the Bureau of Internal Revenue reinvestigated the case. At the end of this new inquest, however, the appellee, thru the then Collector of Internal Revenue, insisted on the payment of the original assessment of P340, 179.84. It suggested, though, that if the appellant disagreed with the said finding he could submit the same for study, review and decision by the Conference Staff of the Bureau of Internal Revenue. In due time, the above assessment was heard before the said body which, subsequently, recommended a reduction of the same to P249,289.26, a deficiency income tax for the year 1946. After the recommendation was approved by the Bureau, the corresponding assessment notice for the sum of P249,289.26 as deficiency income tax and 50% surcharge for the year 1946 and 1% monthly interest and penalty incident to delinquency was forthwith issued to the appellant.

On May 21, 1967, the above assessment was further revised by segregating the appellant's tax liability for the two years in question. Pursuant to a memorandum of the BIR Regional Director of San Fernando, Pampanga, another demand was made upon the appellant for the payment of P106, 220.75 and P37,849.58 as income taxes due from him for the years 1946 and 1947, respectively, or a total of P144, 076.33.

When the appellant failed to pay the above demand, appellee instituted the present suit on April 7, 1960. The appellant filed his answer on July 7, 1960 and amended it on July 19, 1960.

Prior to the trial of the case, the appellant filed with the court below a motion to dismiss grounded on prescription ad lack of jurisdiction. The same was, however, denied by the lower court as unmeritorious. Moreover, for failure of the appellant or his counsel to appear at the scheduled hearing, the defendant-appellant was declared in default. The motion for reconsideration of this last order declaring the appellant in default for failure to appear was also denied by the trial court for lack of merit.

On November 7, 1960, after the appellee had presented its documentary evidence against the appellant, the lower court rendered the decision under appeal.

The appellant ascribes several errors to the decision of the court a quo, the more fundamental of which is the claim that as a concessionaire in an American Air Base, he is not subject to Philippine tax laws pursuant to the United States-Philippine Military Bases Agreement. In support of the claim, the following provision of the above

Bases Agreement is invoked:

"Article XVIII.-Sales and Services within the Bases.

"1. It is mutually agreed that the United States shall have the right to establish on bases, free of all license; fees; sales excise or other taxes or imposts; Government agencies including concessions, such as sales, commissaries and post exchanges, masses and social clubs, for the exclusive use of the United States military forces and authorized civilian personnel and their families. The merchandise or services sold or dispensed by such agencies shall be free of all taxes, duties and inspection by the Philippine authorities. Administrative measures shall lie taken by the appropriate authorities of the United States to prevent the sale of goods which are now under the provisions of this Article to persons not entitled to buy goods at such agencies, and, generally, to prevent abuse of the privileges granted under this Article. There shall be cooperation between such authorities and the Philippines to this end.

"2. Except as may be provided in any other agreements, no persons shall habitually render any professional services in a base except to or for the United States or to or for the persons mentioned in the preceding paragraph. No business shall be established in a base, it being understood that the Government agencies mentioned in the preceding paragraph shall not be regarded as businesses for the purpose of this Article."

The contention is clearly unmeritorious.

The above provision of the Military Bases Agreement has already been interpreted by this Court in at least two cases, namely: *Canlas vs. Republic*, G. R. No. L-11035, May 31, 1958 and *Naguia vs. J. A. Araneta*, G. R. No. L-11594, December 22, 1958. In the latter case this Court said:

"The provision relied upon by the appellant plainly contemplates limiting the exemption from the licenses, fees and taxes enumerated therein to the right to establish Government agencies, including concessions, and to the merchandise or services sold or dispensed by such agencies. The income tax, which is certainly not on the right to establish agencies or on the merchandise or services sold or dispensed thereby, but on the owner or operator of such agencies, is logically excluded. The payment by the latter of the income tax is perfectly consistent with and would not frustrate the obvious objective of the agreement, namely, to enable the members of the United States Military Forces and authorized civilian personnel and their families to procure merchandise or services within the bases at reduced prices. This construction is unmistakably borne out by the fact that, in dealing particularly with the matter of income tax, the Military Bases Agreement provides as follows:

'INTERNAL REVENUE TAX EXEMPTION

'1. No member of the United States armed forces, except Filipino citizens, serving in the Philippines in connection with the bases and residing in the Philippines by reason of such services or his dependents, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources.

'2. No national of the United States serving in or employed in the Philippines in connection with the maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse, and minor children and dependent parents of either spouses, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine source or sources other than the United States source.

'3. No persons referred to in paragraphs 1 and 2 of this article shall be liable to pay the Government or local authorities of the Philippines any poll or residence tax, or any import or export duty, or any other tax on personal property imported for his own use; provided that privately owned vehicles shall be subject to the payment of the following only: When certified as being used for military purposes by appropriate United States authorities, the normal license plate and registration fees.

'4. No national of the United States, or corporation organized under the laws of the United States, resident in

the United States, shall be liable to pay income tax in the Philippines in respect of any profits derived under a contract made in the United States in connection with the construction, maintenance, operation and defense of the bases, or any tax in the nature of a license in respect of any service or work for the United States in connection with the construction, maintenance, operation and defense of the bases.'

"None of the above-quoted covenants shields a concessionaire, like the appellant, from the payment of the income tax. For one thing, even the exemption in favor of members of the United States Armed Forces and nationals of the United States does not include income derived from Philippine sources.

"The appellant cannot seek refuge in the use of 'excise' or 'other taxes or imposts' in paragraph 1 of Article XVIII of the Military Bases Agreement, because, as already stated, said terms are employed with specific application to the right to establish agencies and concessions within the bases and to the merchandise or services sold or dispensed by such agencies or concessions."

The same conclusion was reached in the case of *Cantos vs. Republic*, supra.

The appellant maintains, however, that the rulings in the above two cases are inapplicable to the suit at bar because the said cases involved the income of public utility operators in the Air Base who were not "concessionaires" like him.

The above contention is as unmeritorious as it is untrue. In the case of *Araneta vs. Manila Pencil Company Inc.*, G. R. No. L-8182, June 29, 1957, this Court already ruled that operators of freight and bus services are within the meaning of the word "concession" appearing in the Military Bases Agreement. Thus, in the *Canlas* case above, We said:

"There is no dispute as to the fact that defendant Manila Company, as successor-in-interest of the Philippine Company, as successor-in-interest of the Philippine Consolidated Freight Lines Inc., was engaged in and duly licensed by the U.S. Military authorities to operate a freight and bus service within the Clark Air Base, a military reservation established in conformity with the agreement concluded between the Government of the Philippines and the United States on March 14, 1947 (43 Off. Gaz., No.3, p. 1020). And as such grantee of a franchise, which this Court was held to be embraced within the meaning of the word 'concession' appearing in the treaty and was declared exempted from the payment of the contractor's tax (*Araneta vs. Manila Pencil Company*, G. R. No. L-8182, June 29, 1957)* * *."

It is very clear, therefore, that the rulings of this Court in the two cases above cited are applicable to this appeal under consideration.

The other point raised by the appellant on this appeal pertains to the refusal of the trial court to reconsider its order declaring him in default for the failure of his counsel to appear at the scheduled trial despite due notice. He complains that when the trial proceeded in his absence, he was denied his day in court. In the premises, his counsel insists that his absence then was for a good and reasonable cause.

Suffice it to say in regard to the above that the matter complained of is beyond this Court to disturb. The matter of adjournments, postponements, continuances and reconsideration of orders of default lie within the discretion of courts and will not be interfered with either by mandamus or appeal (*Samson vs. Naval*, 41 Phil. 838) unless a showing of grave abuse can be made against said courts. Moreover, where absence of a party from the trial was due to his own fault, he should not be heard to complain that he was deprived of his day in court. (*Sandejas vs. Robles*, 81 Phil. 421; *Siojo vs. Tecson*, 88 Phil. 531).

The counsel's excuse for his absence at the trial was alleged "lack of transportation facilities in his place of residence at Gagalangin, Tondo, Manila, on that morning of August 8, when torrential rain poured down in his locality." The lower court did not deem this as a sufficiently valid explanation because it observed that despite

such torrential rain, the counsel for the plaintiff-appellee, a lady attorney who was then a resident of a usually inundated area of Sampaloc, Manila, somehow made it to the court. Under these circumstances, the trial court's ruling can hardly be considered as an abuse of his discretion.

Finally, the appellant disputes the lower court's finding of fraud against him in this incident. He argues that the facts invoked by the lower court do not sufficiently establish the same.

As rightly argued by the Solicitor General's office, since fraud is a state of mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case. The failure of the appellant to declare for taxation purposes his true and actual income derived from his furniture business at the Clark Field Air Base for two consecutive years is an indication of his fraudulent intent to cheat the Government of its due taxes.

"The substantial underdeclaration of income in the income tax returns of the appellant for four consecutive years, coupled with his intentional overstatement of deductions made the imposition of the fraud penalty proper." (Eugenio Perez vs. Court of Tax Appeal and the Collector of Internal Revenue, G. R. No.L-10507, May 30, 1958.)

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered affirming in full the decision here appealed from, with costs against the defendant-appellant.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Dizon, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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