

ANTONIO ROXAS, EDUARDO ROXAS AND ROXAS Y CIA., IN THEIR OWN RESPECTIVE BEHALFS AND AS JUDICIAL CO-GUARDIANS OF JOSE ROXAS, PETITIONERS VS. COURT OF TAX APPEALS AND COMMISSIONER ...

G.R. No. L-25043. April 26, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Don Pedro Roxas and Doña Carmen Ayala, Spanish subjects, transmitted to their grandchildren by hereditary succession the following properties:

- (1) Agricultural lands with a total area of 19,000 hectares, situated in the municipality of Nasugbu, Batangas province;
- (2) A residential house and lot located at Wright St., Malate, Manila; and
- (3) Shares of stocks in different corporations.

To manage the above-mentioned properties, said children namely, Antonio Roxas, Eduardo Roxas and Jose Roxas, formed a partnership called Roxas y Compañia.

AGRICULTURAL LANDS

At the conclusion of the Second World War, the tenants who have all been tilling the lands in Nasugbu for generations expressed their desire to purchase from Roxas y Cia. the parcels which they actually occupied. For its part, the Government, in consonance with the constitutional mandate to acquire big landed estates and apportion them among landless tenants-farmers, persuaded the Roxas brothers to part with their landholdings. Conferences were held with the farmers in the early part of 1948 and finally the Roxas brothers agreed to sell 13,500 hectares to the Government for distribution to actual occupants for a price of P2,079,048.47 plus 1*300,000.00 for survey and subdivision expenses.

It turned out however that the Government did not have funds to cover the purchase price, and so a special arrangement was made for the Rehabilitation Finance Corporation to advance to Roxas y Cia. the amount of T ,500,000.00 as loan. Collateral for such loan were the lands proposed to be sold to the farmers. Under the arrangement, Roxas y Cia. allowed the farmers to buy the lands for the same price but by installment, and contracted with the Rehabilitation Finance Corporation to pay its loan from the proceeds of the yearly amortizations paid by the farmers.

In 1953 and 1955 Roxas y Cia. derived from said installment payments a net gain of P42,480.83 and P29,500.71. Fifty percent of said net gain was reported for income tax purposes as gain on the sale of capital asset held for more than one year pursuant to Section 34 of the Tax Code.

RESIDENTIAL HOUSE

During their bachelor days the Roxas brothers lived in the residential house at Wright St., Malate, Manila, which they inherited from their grandparents. After Antonio and Eduardo got married, they resided somewhere else leaving only Jose in the old house. In fairness to his brothers, Jose paid to Roxas y Cia. rentals for the house in the sum of P8,000.00 a year.

ASSESSMENTS

On June 17, 1958, the Commissioner of Internal Revenue demanded from Roxas y Cia. the payment of real estate dealer's tax for 1952 in the amount of "P150.00 plus "P10.00 compromise penalty for late payment, and "P150.00 tax for dealers of securities for 1952 plus "P10.00 compromise penalty for late payment. The assessment for real estate dealer's tax was based on the fact that Roxas y Cia. received house rentals from Jose Roxas in the amount of "P8,000.00. Pursuant to Sec. 194 of the Tax Code, an owner of a real estate who derives a yearly rental income therefrom in the amount of P3,000.00 or more is considered a real estate dealer and is liable to pay the corresponding fixed tax.

The Commissioner of Internal Revenue justified his demand for the fixed tax on dealers of securities against Roxas y Cia., on the fact that said partnership made profits from the purchase and sale of securities.

In the same assessment, the Commissioner assessed deficiency income taxes against the Roxas brothers for the years 1953 and 1955, as follows:

1953

1955

Antonio Roxas

P7,010.00

P5,813.00

Eduardo Roxas

7,281.00

5,828.00

Jose Roxas

6,323.00

5,588.00

The deficiency income taxes resulted from the inclusion as income of Roxas y Cia. of the unreported 50% of the net profits for 1953 and 1955 derived from the sale of the Nasugbu farm lands to the tenants, and the disallowance of deductions from gross income of various business expenses and contributions claimed by Roxas y Cia. and the Roxas brothers'. For the reason that Roxas y Cia. subdivided its Nasugbu farm lands and sold them to the farmers on installment, the Commissioner considered the partnership as engaged in the business of real estate, hence 100% of the profits derived therefrom was taxed.

The following deductions were disallowed:

ROXAS Y CIA.:

1953

Tickets for Banquet in honor of S. Osmeña

P 40.00

Gifts of San Miguel Beer Contributions to -

28.00

Philippine Air Force Chapel

100.00

Manila Police Trust Fund Philippines Herald's fund for

150.00

Manila's neediest families

100.00

1955

Contribution to Our Lady of Fatima Chapel, FEU

50.00

ANTONIO ROXAS:

1953

Contributions to —

Pasay City Firemen Christmas Fund

25.00

Pasay City Police Dept. X'Mas fund

50.00

1955

Contributions to —

Baguio City Police Christmas fund

25.00

Pasay City Firemen Christmas fund

25.00

Pasay City Police Christmas fund

50.00

EDUARDO ROXAS:

1953 Contributions to —

Hijas de Jesus' Retiro de Manresa

450.00

Philippines Herald's fund for

Manila's neediest families

100.00

1955

Contribution to Philippines Herald's

fund for Manila's neediest families

120.00

JOSE ROXAS:

1955

Contribution to Philippines Herald's fund for Manila's neediest families 120.00

The Roxas brothers protested the assessment but inasmuch as said protest was denied, they instituted an appeal in the Court of Tax Appeals on January 9, 1961. The Tax Court heard the appeal and rendered judgment on July 31, 1965 sustaining the assessment except the demand for the payment of the fixed tax on dealer of securities and the disallowance of the deductions for contributions to the Philippine Air Force Chapel and Hijas de Jesus' Retiro de Manresa. The Tax Court's judgment reads:

"WHEREFORE, the decision appealed from is hereby affirmed with respect to petitioners Antonio Roxas, Eduardo Roxas and Jose Roxas who are hereby ordered to pay the respondent Commissioner of Internal Revenue the amounts of P12,808.00, P12,887.00 and P11,857.00, respectively, as deficiency income taxes for the years 1953 and 1955, plus 5% surcharge and 1% monthly interest as provided for in Sec. 51 (a) of the Revenue Code; and modified with respect to the partnership Roxas y Cia. in the sense that it should pay only "P150.00, as real estate dealer's tax. With costs against petitioners."

Not satisfied, Roxas y Cia. and the Roxas brothers appealed to this Court. The Commissioner of Internal Revenue

did not appeal. The issues:

- (1) Is the gain derived from the sale of the Nasugbu farm lands an ordinary gain, hence 100% taxable?
- (2) Are the deductions for business expenses and contributions deductible?
- (3) Is Roxas y Cia. liable for the payment of the fixed tax on real estate dealers?

The Commissioner of Internal Revenue contends that Roxas y Cia. could be considered a real estate dealer because it engaged in the business of selling real estate. The business activity alluded to was the act of subdividing the Nasugbu farm lands and selling them to the farmers-occupants on installment. To bolster his stand on the point, he cites one of the purposes of Roxas y Cia. as contained in its articles of partnership, quoted below:

“4.(a) La explotación de fincas urbanas pertenecientes a la misma o que pueden pertenecer a ella en el futuro, alquilándoles por los plazos y demás condiciones, estime convenientes y vendiendo aquellas que a juicio de sus gerentes no deben conservarse;”

The above-quoted purpose notwithstanding, the proposition of the Commissioner of Internal Revenue cannot be favorably accepted by Us in this isolated transaction with its peculiar circumstances in spite of the fact that there were hundreds of vendees. Altho they paid for their respective holdings in installment for a period of ten years, it would nevertheless not make the vendor Roxas y Cia. a real estate dealer during the ten-year amortization period.

It should be borne in mind that the sale of the Nasugbu farm lands to the very farmers who tilled them for generations was not only in consonance with, but more in obedience to the request and pursuant to the policy of our Government to allocate lands to the landless. It was the bounden duty of the Government to pay the agreed compensation after it had persuaded Roxas y Cia. to sell its haciendas, and to subsequently subdivide them among the farmers at very reasonable terms and prices. However, the Government could not comply with its duty for lack of funds. Obliginglly, Roxas y Cia. shouldered the Government's burden, went out of its way and sold the lands directly to the farmers in the same way and under the same terms as would have been the case had the Government done it itself. For this magnanimous act, the municipal council of Nasugbu passed a resolution expressing the people's gratitude.

The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kill the “hen that lays the golden egg”. And, in order to maintain the general public's trust and confidence in the Government, this power must be used justly and not treacherously. It does not conform with Our sense of justice in the instant case for the Government to persuade the taxpayer to lend it a helping hand and later on to penalize him for duly answering the urgent call.

In fine, Roxas y Cia. cannot be considered a real estate dealer for the sale in question. Hence, pursuant to Section 34 of the Tax Code the lands sold to the farmers are capital assets, and the gain derived from the sale thereof is capital gain, taxable only to the extent of 50%.

DISALLOWED DEDUCTIONS

Roxas y Cia. deducted from its gross income the amount of "P40.00 for tickets to a banquet given in honor of Sergio Osmeña and P28.00 for San Miguel beer given as gifts to various persons. The deductions were claimed as representations expenses. Representation expenses are deductible from gross income as expenditures incurred in carrying on a trade or business under Section 30(a) of the Tax Code provided the taxpayer proves that they are reasonable in amount, ordinary and necessary, and incurred in connection with his business. In the case at bar, the evidence does not show such link between the expenses and the business of Roxas y Cia. The findings of the

Court of Tax Appeals must therefore be sustained.

The petitioners also claim deductions for contributions to the Pasay City Police, Pasay City Firemen, and Baguio City Police Christmas funds, Manila Police Trust Fund, Philippines Herald's fund for Manila's neediest families and Our Lady of Fatima chapel at Far Eastern University.

The contributions to the Christmas funds of the Pasay City Police, Pasay City Firemen and Baguio City Police are not deductible for the reason that the Christmas funds were not spent for public purposes but as Christmas gifts to the families of the members of said entities. Under Section 39(h), a contribution to a government entity is deductible when used exclusively for public purposes. For this reason, the disallowance must be sustained. On the other hand, the contribution to the Manila Police trust fund is an allowable deduction for said trust fund belongs to the Manila Police, a government entity, intended to be used exclusively for its public functions.

The contributions to the Philippines Herald's fund for Manila's neediest families were disallowed on the ground that the Philippines Herald is not a corporation or an association contemplated in Section 30(h) of the Tax Code. It should be noted however that the contributions were not made to the Philippines Herald- but to a group of civic spirited citizens organized by the Philippines Herald solely for charitable purposes. There is no question that the members of this group of citizens do not receive profits, for all the funds they raised were for Manila's neediest families. Such a group of citizens may be classified as an association organized exclusively for charitable purposes mentioned in Section 30(h) of the Tax Code.

Rightly, the Commissioner of Internal Revenue disallowed the contribution to Our Lady of Fatima chapel at the Far Eastern University on the ground that the said university gives dividends to its stockholders. Located within the premises of the university, the chapel in question has not been shown to belong to the Catholic Church or any religious organization. On the other hand, the lower court found that it belongs to the Far Eastern University, contributions to which are not deductible under Section 30(h) of the Tax Code for the reason that the net income of said university inures to the benefit of its stockholders. The disallowance should be sustained.

Lastly, Roxas y Cia. questions the imposition of the real estate dealer's fixed tax upon it, because altho it earned a rental income of P8,000.00 per annum in 1952, said rental income came from Jose Roxas, one of the partners. Section 194 of the Tax Code, in considering as real estate dealers owners of real estate receiving rentals of at least P3,000.00 a year, does not provide any qualification as to the persons paying the rentals. The law, which states:

“ . . . ‘Real estate dealer’ includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property on 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 supplied)

is too clear and explicit to admit construction. The findings of the Court of Tax Appeals on this point is sustained.

To summarize, no deficiency income tax is due for 1953 from Antonio Roxas, Eduardo Roxas and Jose Roxas. For 1955 they are liable to pay deficiency income tax in the sum of P109.00, P91.00 and P49.00, respectively computed as follows:[*]

ANTONIO ROXAS

Net income per return

P315,476.59

Add: 1/3 share, profits in

Roxas y Cia.

P153,249.15

Less amount declared

146,135.46

Amount understated

7,113.69

Contributions disallowed

115.00

P7,228.69

Less 1/3 share of contributions amounting to P21, 126.06 disallowed from partnership but allowed to partners

7,042.02

186.67

Net income per review

P315,663.26

Less: Exemptions

4,200.00

Net taxable income

P 311,463.26

Tax due

154,169.00

Tax paid

154,060.00

Deficiency

P 109.00

EDUARDO ROXAS

Net income per return

P304,166.92

Add: 1/3 share, profits in Roxas y Cia.

P153,249.15

Less profits declared

146,052.58

Amount understated

P 7,196.57

Less 1/3 share in contributions amounting to P21,126.06 disallowed from partnership but allowed to partners

7,042.02

155.55

Net income per review

P304,322.47

Less: Exemptions

4,800.00

Net taxable income

P299,522.47

Tax due

P147,250.00

Tax paid

147,159.00

Deficiency

P 91.00

JOSE ROXAS

Net income per return

P222,681.76

Add: 1/3 share, profits in Roxas y Cia.

P153,429.15

Less amount reported

146,135.46

Amount understated

7,113.69

Less 1/3 share of contributions disallowed from partnership but allowed as deductions to partners

7,042.02

71.67

Net income per review

P222,753.43

Less: Exemption

1,800.00

Net income subject to tax

P220,953.43

Tax due

P102,763.00

Tax paid

102,714.00

Deficiency

P 49.00

WHEREFORE, the decision appealed from is modified. Roxas y Cia. is hereby ordered to pay the sum of ₱150.00 as real estate dealer's fixed tax for 1952, and Antonio Roxas, Eduardo Roxas and Jose Roxas are ordered to pay the respective sums of P109.00, "P91.00 and P49.00 as their individual deficiency income tax all corresponding for the year 1955. No costs.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgment modified.

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