

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. MARIANO, ZAMORA, RESPONDENT.

G.R. No. L-15280. May 31, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

In the above-entitled cases, a joint decision was rendered by the lower court because they involved practically the same issues. We do so, likewise, for the same reason.

Cases Nos. L-15290 and L-15280

Mariano Zamora, owner of the Bay View Hotel and Farmacia Zamora, Manila, filed his income tax returns for the years 1951 and 1962. The Collector of Internal Revenue found that he failed to file his return of the capital gains derived from the sale of certain real properties and claimed deductions which were not allowable. The Collector required him to pay the sums of P43,758.50 and P7,625.00, as deficiency income tax for the years 1951 and 1952, respectively (C.T.A. Case No. 234, now L-15290). An appeal by Zamora, the Court of Tax Appeals on December 29, 1958, modified the decision appealed from and ordered him to pay the reduced total sum of P30,258.00 (P22,980.00 and P7,278.00, as deficiency income tax for the years 1951 and 1952, respectively), within thirty (30) days from the date the decision becomes final, plus the corresponding surcharges and interest in case of delinquency, pursuant to section 51 (e), Int. Revenue Code. With costs against petitioner.

Having failed to obtain a reconsideration of the decision, Mariano Zamora appealed (L-15290), alleging that the Court of Tax Appeals erred-

- (1) In disallowing P10,478.50, as promotion expenses incurred by his wife for the promotion of the Bay View Hotel and Farmacia Zamora (which is ½; of P20,957.00, supposed business expenses);
- (2) In disallowing 3½%, per annum, at the rate of depreciation of the Bay View Hotel Building;
- (3) In disregarding the price stated in the deed of sale, as the cost of a Manila property, for the purpose of determining alleged capital gains and
- (4) In applying the Ballantyne scale of values in determining the cost of said property.

The Collector of Internal Revenue (L-15280) also appealed, claiming that the Court of Tax Appeals erred-

- (1) In giving credence to the uncorroborated testimony of Mariano Zamora that he bought the said real property in question during the Japanese occupation, partly in Philippine currency and partly in Japanese war notes, and
- (2) In not holding that Mariano Zamora is liable for the payment of the sums of P43,758.00 and P7,625.00, as deficiency income taxes, for the years 1951 and 1952, plus the 5% surcharge and 1% monthly interest, from the date said amounts became due to the date of actual payment.

Cases nos. L-15289 and L-15281

Mariano Zamora and his deceased sister Felicidad Zamora, bought a piece of land located in Manila on May 16, 1944, for P132,000.00 and sold it for P75,000.00 on March 5, 1951. They also purchased a lot located in Quezon City for P68,959.00 on January 19, 1944, which they sold for P94,000 on February 9, 1951. The CTA ordered the estate of the late Felicidad Zamora (represented by Esperanza A. Zamora, as special administratrix of her estate), to pay the sum of P235.50, representing alleged deficiency, income tax and surcharge due from said estate. Esperanza A. Zamora appealed and alleged that the CTA erred-

- (1) In disregarding the price stated in the deed of sale, as the cost of the Manila Property for the purpose of determining alleged capital gains; and
- (2) In applying the Ballantyne Scale of values in determining the cost thereof.

The Commissioner of Internal Revenue likewise appealed from the decision, claiming that the lower court erred-

- (1) In giving credence to the uncorroborated testimony of Mariano Zamora that he bought the real property involved during the Japanese occupation, partly in genuine Philippine currency and partly in Japanese war notes; and
- (2) In not holding that Esperanza A. Zamora, as administratrix, is liable for the payment of the sum of P613.00 as deficiency income tax and 50% surcharge for 1951, plus 50% surcharge and 1% monthly interest from the date said amount became due, to the date of actual payment.

It is alleged by Mariano Zamora that the CTA erred in disallowing P10,478.50 as promotion expenses incurred by his wife for the promotion of the Bay View Hotel and Farmacia Zamora. He contends that the whole amount of P20,957.00 as promotion expenses in his 1951 income tax returns, should be allowed and not merely one-half of it or P10,478.50, on the ground that, while not all the itemized expenses are supported by receipts, the absence of some supporting receipts has been sufficiently and satisfactorily established. For, as alleged, the said amount of P20,957.00 was spent by Mrs. Esperanza A. Zamora (wife of Mariano), during her travel to Japan and the United States to purchase machinery for a new Tiki-Tiki plant, and to observe hotel management in modern hotels. The CTA, however, found that for said trip Mrs. Zamora obtained only the sum of P5,000.00 from the Central Bank and that in her application for dollar allocation, she stated that she was going abroad on a combined medical and business trip, which facts were not denied by Mariano Zamora. No evidence had been submitted as to where Mariano had obtained the amount in excess of P5,000.00 given to his wife which she spent abroad. No explanation had been made either that the statement contained in Mrs. Zamora's application for dollar allocation that she was going abroad on a combined medical and business trip, was not correct. The alleged expenses were not supported by receipts. Mrs. Zamora could not even remember how much money she had when she left abroad in 1951, and how the alleged amount of P20,957.00 was spent.

Section 30, of the Tax Code, provides that in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year, in carrying on any trade or business (Vol. 4, Mertens, Law of Federal Income Taxation, sec. 25.03, p. 307). Since promotion expenses constitute one of the deductions in conducting a business, same must satisfy these requirements. Claims for the deduction of promotion expenses or entertainment expenses must also be substantiated or supported by record showing in detail the amount and nature of the expense incurred (N.H. Van Sicklen, Jr. vs. Comm. of Int. Rev., 33 BTA 544). Considering, as heretofore stated, that the application of Mrs. Zamora for dollar allocation shows that she went abroad on a combined medical and business trip, not all of her expenses came under the category of ordinary and necessary expenses; part thereof constituted her personal expenses. There having been no means by which to ascertain which expense was incurred by her in connection with the business of Mariano Zamora and which was incurred for her personal benefit, the Collector and the CTA in their decisions, considered 50% of the said amount

of P20,957.00 as business expense and the other 50%, as her personal expense. We hold that said allocation is very fair to Mariano Zamora, there having been no receipt whatsoever, submitted to explain the alleged business expenses, or proof of the connection which said expenses had to the business or the reasonableness of the said amount of P20,957.00. While in situations like the present, absolute certainty is usually not possible, the CTA should make as close an approximate as it can, bearing heavily, if it chooses, upon the taxpayer whose inexactness is of his own making.

In the case of *Visayan Cebu Terminal Co., Inc., vs. Collector of Int. Rev.*, 108 Phil., 320, it was declared that representation expenses fall under the category of business expenses which are allowable deductions from gross income, if they meet the conditions prescribed by law, particularly section 30 (a) [1], of the Tax Code; that to be deductible, said business expenses must be ordinary and necessary expenses paid or incurred in carrying on any trade or business; that those expenses must also meet the further test of reasonableness in amount; that was some of the representation expenses claimed by the taxpayer were evidenced by vouchers or chits, but others were without vouchers or chits, documents or supporting papers; that there is no more than oral proof to the effect that payments have been made for representation expenses allegedly made by the taxpayer and about the general nature of such alleged expenses; that accordingly, it is not possible to determine the actual amount covered by supporting papers and the amount without supporting papers, the court should determine from all available data, the amount properly deductible as representation expenses.

In view hereof, We are of the opinion that the CTA, did not commit error in allowing as promotion expenses of Mrs. Zamora claimed in Mariano Zamora 1951 income tax returns, merely one-half or P10,478.50.

Petitioner Mariano Zamora alleges that the CTA erred in disallowing 3½% per annum as the rate of depreciation of the Bay View Hotel Building but only 2½%. In justifying depreciation deduction of 3½% Mariano Zamora contends that (1) the Ermita District, where the Bay View Hotel is located, is now becoming a commercial district; (2) the hotel has no room for improvement; and (3) the changing modes in architecture, styles of furniture and decorative designs, "must meet the taste of a fickle public". It is a fact, however, that the CTA, in estimating the reasonable rate of depreciation allowance for hotels made of concrete and steel at 2½%, the three factors just mentioned had been taken into account already. Said the CTA-

"Normally, an average hotel building is estimated to have a useful life of 50 years, but inasmuch as the useful life of the building for business purposes depends to a large extent on the suitability of the structure to its use and location, its architectural quality, the rate of change in population, the shifting of land values, as well as the extent and maintenance and rehabilitation, it is allowed a depreciation rate of 2½% corresponding to a normal useful life of only 40 years (1955 PH Federal Taxes, Par. 14 160-K). Consequently, the stand of the petitioners can not be sustained".

As the lower court based its findings on Bulletin F, petitioner Zamora, argues that the same should have been first proved as a law, to be subject to judicial notice. Bulletin F, is a publication of the US Federal Internal Revenue Service, which was made after a study of the lives of the properties. In the words of the lower court: "It contains the list of depreciable assets, the estimated average useful lives thereof and the rates of depreciation allowable for each kind of property. See 1955 PH Federal Taxes, Par. 14, 160 to Par. 14, 1630. It is true that Bulletin F has no binding force, but it has a strong persuasive effect considering that the same has been the result of scientific studies and observation for a long period in the United States after whose Income Tax Law ours is patterned." Verily, courts are permitted to look into and investigate the antecedents or the legislative history, of the statutes involved (*Director of Lands vs. Abaya, et al.* 63 Phil. 559). Zamora also contends that his basis for applying the 3½% rate is the testimony of its witness Mariano Katipunan, who cited a book entitled "Hotel Management-Principles and Practice" by Lucius Boomer, President, Hotel Waldorf Astoria Corporation. As well commented by

the Solicitor General, "while the petitioner would deny us the right to use Bulletin F, he would insist on using as authority, a book in hotel management written by a man who knew more about hotels than about taxation. All that the witness did (Katipunan) * * * is, to read excerpts from the said book (t.s.n. pp. 99-101), which admittedly were based on the decisions of the U.S., Tax Courts, made in 1928 (tsn p. 106)". In view hereof, We hold that the 2½% rate of depreciation of the Bay. View Hotel building, is approximately correct.

The next items in dispute are the undeclared capital; gains derived from the sales in 1951 of certain real properties in Malate, Manila and in Quezon City, acquired during the Japanese occupation.

The Manila property (*Esperanza Zamora vs. Coll. of Int. Rev.* Case No. L-15289). The CTA held in this case, that the cost basis of property acquired in Japanese war notes is the equivalent of the war notes in genuine Philippine currency in accordance with the Ballantyne Scale of values, and that the determination of the gain derived or loss sustained in the sale of such property is not affected by the decline at the time of sale, in the purchasing power of the Philippine currency. It was found by the CTA, that the purchase price of P132,000.00 was not entirely paid in Japanese War notes but ½ thereof or P66,000.00 was in Philippine currency, and that during certain periods of the enemy occupation, the value of the Japanese War notes was very much less than the value of the genuine Philippine currency. On this point, the CTA declared-

"Finally, it is alleged that the purchase price of P132,000.00 was net entirely paid in Japanese war notes, Mariano Zamora, co-owner Of the property in question, testified that P66,000.00 was paid in Philippine currency and the other P66,000.00 was paid in Japanese war notes. No evidence was presented by respondent to rebut the testimony of Mariano Zamora; it is assailed merely as being improbable. We have examined this question thoroughly and we are inclined to give credence to the allegation that a portion of the purchase price of the property was paid in Philippine money. In the first place, it appears that the Zamoras owned the Farmacia Zamora which continued to engage in business during the war years and that a considerable portion of its sales was paid for in genuine Philippine currency. This circumstance enabled the Zamoras to accumulate Philippine money which they used in acquiring the property in question and another property in Quezon City. In the second place, P132,000.00 in Japanese war notes in May, 1944 is equivalent to only P11,000.00. The property in question had at the time an assessed value of P27,031.00 (in Philippine currency). Considering the well known fact that the assessed value of real property is very much below the fair market value, it is incredible that said property should have been sold by the owner thereof for less than one-half of its assessed value. These facts have convinced us of the veracity of the allegation that of the purchase price of P132,000.00 the sum of P66,000.00 was paid in Philippine currency, so that only the sum of P66,000.00 was paid in Japanese War notes."

This being the case, the Ballantyne Scale of values, which was the result of an impartial scientific study, adopted and given judicial recognition, should be applied. As the value of the Japanese war notes in May, 1944 when the Manila property was bought, was 1/12 of the genuine Philippine Peso (Ballantyne Scale), and since the gain derived or loss sustained in the disposition of this property is to be reckoned in terms of Philippine Peso, the value of the Japanese war notes used in the purchase of the property, must be reduced in terms of the genuine Philippine Peso to determine the cost of acquisition. It, therefore, results that since the sum of P66,000.00 in Japanese war notes in May, 1944 is equivalent to P5,500.00 in Philippine currency (P66,000.00 divided by 12), the acquisition cost of the property in question is P66,000.00 plus P5,500.00 or P71,500.00 and that as the property was sold for P75,000.00 in 1951, the owners thereof Mariano and Felicidad Zamora derived a capital gain of P3,500.00 or P1,750.00 each.

The Quezon City Property (*Mariano Zamora vs. CoD, of Customs*, Case No. 15290). The Zamoras alleged that the entire purchase price of P68,959.00 was paid in Philippine currency. The collector, on the other hand, contends that the purchase price of P68,959.00 was paid in Japanese war notes. The CTA, however, giving

credence to Zamora's version, said-

"* * *. If, as contended by respondent, the purchase price of P68,959.00 was paid in Japanese war notes, the purchase price in Philippine currency would be only P17,239.75 (P68,959.00 divided by 4, 34.00 in war notes being equivalent to P1.00 in Philippine currency). The assessed value of said property in Philippine currency at the time of acquisition was P46,910.00. It is quite incredible that real property with an assessed value of P46,910.00 should have been sold by the owner thereof in Japanese war notes with an equivalent value in Philippine currency of only P17,239.75. We are more inclined to believe the allegation that it was purchased for P46,910.00 in genuine Philippine currency. Since the property was sold for P94,000.00 on February 9, 1951, the gain derived from the sale is P15,361.75, after deducting from the selling price the cost of acquisition in the sum of P68,959.00 and the expense of sale in the sum of P9,679.25."

The above appraisal is correct, and We have no plausible reason to disturb the same.

Consequently, the total undeclared income of petitioners derived from the sales of the Manila and Quezon City properties in 1951 is P17,111.75 (P1,750.00 plus P15,361.75), 50% of which is the sum of P8,555.88 Is taxable, the said properties being capital assets held for more than one year.

IN VIEW HEREOF, the petition in each of the above-entitled cases is dismissed, and the decision appealed from is affirmed, without special pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Dizon, Regala, and Makalintal, JJ., concur.

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