

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. ARTHUR HENDERSON, RESPONDENT. ARTHUR HENDERSON, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. Nos. L-12954 and L-13049. February 28, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

These are petitions filed by the Collector of Internal Revenue (G. R. No. L-12954) and by Arthur Henderson (G. R. No. L-13049) under the provisions of section 18, Republic Act No. 1125, for review of a judgment dated 26 June 1957 and a resolution dated 28 September 1957 rendered and adopted by the Court of Tax Appeals in Case No. 237.

The spouses Arthur Henderson and Marie B. Henderson (later referred, to as the taxpayers) filed with the Bureau of Internal Revenue returns of annual net income for the years 1948 to 1952, inclusive, where the following net incomes, personal exemptions and amounts subject to tax appear:

1948:

Net Income

P29,573.79

Less Personal Exemption

2,500.00

Amount Subject to tax

P27,073.79

1949:

Net Income

P31,817.66

Less Personal Exemption

2,500.00

Amount subject to tax

P29,317.66

1950:

Net Income

P34,815.74

Less Personal Exemption

3,000.00

Amount Subject to tax

P31,815.74

1951:

Net Income

P32,605.83

Less Personal Exemption

3,000.00

Amount Subject to tax

P29,605.83

1952:

Net Income

P36,780.11

Less Personal Exemption

3,000.00

Amount Subject to tax

P33,780.11

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(Exhibits 1, 3, 5, 7, 9, A, F, J, N, R). In due time the taxpayers received from the Bureau of Internal Revenue assessment notices Nos. 15840-48, 25450-49, 15255-50, 25705-51 and 22527-52 and paid the amounts assessed as follows:

1948:

14 May 1949, O.R. No. 52991, Exhibit E

P2,068.12

12 September 1949, O.R. No. 160473, Exhibit B-1

2,068.11

Total Paid

P4,136.23

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1949:

13 May 1950, O.R. No. 232366, Exhibit G

P2,314.95

15 September 1950, O.R. No. 247918, Exhibit G-1

2,314.94

Total Paid

P4,629.89

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1950:

27 April 1951, O.R. No. 323173, Exhibit K

P7,273.00

1951:

Amount withheld from salary and paid by employer

P5,780.40

15 May 1952, O.R. No. 33250, Exhibit O

360.50

15 August 1952, O.R. No. No. 383318, Exhibit O-1

361.20

Total Paid

P6,502.10

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1952:

Amount withheld from salary and paid by employer

P5,660.40

18 May 1953, O.R. No. 438026, Exhibit T

1,160.30

18 August 1953, O.R. No. 443483, Exhibit T-1

1,160.00

Total Paid

P7,981.00

On 28 November 1953, after investigation and verification, the Bureau of Internal Revenue reassessed the taxpayers' income for the years 1948 to 1952, inclusive, as follows:

Net income per return

P29,573.79

Add:

Rent expense

7,200.00

Additional bonus for 1947 received May 13, 1948

6,500.00

Other income:

Manager's residential expense (2|29|48a|c 4.51)

1,400.00

Manager's residential expense (refer to 1948 P & L)

1,849.32

Entrance fee—Marikina Gun & Country Club

200.00

Net income per investigation

P46,723.11

Less: Personal exemption

2,500.00

Net taxable income

P44,223.11

Tax due thereon

Less: Amount of tax already paid per OR 52991 & 160473

4,136.23

Deficiency tax still due & assessable

P4,426.24

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1949:

Net income per return

P31,817.66

Add disallowances—

Capital loss (no capital gain)

P3,248.84

Undeclared bonus

3,857.75

Rental allowance from A.I.U.

1,800.00

Subsistence allowance from A.I.U.

6,051.60

P14,958.09

Net income per investigation

P46,775.75

Less Personal exemption

2,500.00

Amount of income subject to tax

P43,275.75

Tax due thereon

P8,292.21

Less tax already assessed paid per OR Nos. 232366 &

247918

4,629.89

Deficiency tax due

P3,662.23

(Should be

3,662.32)

1950:

Net Income per return

P34,815.74

Add:

Rent, electricity, water allowances

8,373.73

Net income per investigation

P43,189.47

Less: Personal exemption

3,000.00

Net taxable income

P40,189.47

Tax due thereon

P10,296.00

Less: Tax already paid per O.R. No. 323173

7,273.00

Deficiency tax still due & assessable

P3,023.00

1951:

Net income per return

P32,605.83

Add house rental allowance from AIU

5,782.91

Net income per investigation

P38,388.74

Less personal exemptions

3,000.00

Amount of income subject to tax

P35,388.00

Tax due thereon

P8,560.00

Less tax already assessed and paid per OR Nos.

A33250 & 383318

6,502.00

Deficiency tax due

P2,058.00

1952:

Net income per return

P36,780.11

Add:

Withholding tax paid by company

600.00

Traveling allowances

3,247.40

Allowances for rent, telephone, water, electricity, etc.

7,044.67

Net income per investigation

47,672.18

Less: Personal exemption

3,000.00

Net taxable income

P44,672.18

Tax due thereon

P12,089.00

Less: Tax already withheld

P5,660.40

Tax already paid per O.R. Nos. 438026, 13484

2,320.00

7,981.00

Deficiency tax still due & collectible

P4,108.00

Exhibits 2, 4, 6, 8, 10) and demanded payment of the deficiency taxes on or before 28 February 1954 with respect to those due for the years 1948, 1949, 1950 and 1952 and on or before 15 February 1954 with respect to that due for the year 1951 (Exhibits B-2, H, L, P, S).

In the foregoing assessments, the Bureau of Internal Revenue considered as part of their taxable income the taxpayer-husband's allowances for rental, residential expenses, subsistence, water, electricity and telephone; bonus paid to him; withholding tax and entrance fee to the Marikina Gun and Country Club paid by his employer for his account; and travelling allowance of his wife. On 26 and 27 January 1954 the taxpayers asked for reconsideration of the foregoing assessments (pp. 29, 31, BIR rec.) and on 11 February 1954 and 28 February 1955 stated the grounds and reasons in support of their request for reconsideration (pp. 36-38, 62-66, BIR rec). They claim that as regards the husband-taxpayer's allowances for rental and utilities such as water, electricity and telephone, he did not receive the money for said allowances, but that they lived in the apartment furnished and paid for by his employer for its convenience; that they had no choice but live in the said apartment furnished by his employer, otherwise they would have lived in a less expensive one that as regards his allowances for rental of P7,200 and residential expenses of P1,400 and P1,849.32 in 1948, rental of P1,800 and subsistence of P6,051.50 (the latter merely consisting of allowances for rent and utilities such as light, water, telephone, etc.) in 1949 rental, electricity and water of P8,373.73 in 1950, rental of P5,782.91 in 1951 and rental, telephone, water, electricity, etc. of P7,044.67 in 1952, only the amount of P3,900, for each year, which is the amount they would have spent for rental of an apartment including utilities, should be taxed; that as regards the amount of P200 representing entrance fee to the Marikina Gun and Country Club paid for him by his employer in 1948, the same should not be considered as part of their income for it was an expense of his employer and his membership therein was merely incidental to his duties of increasing and sustaining the business of his employer; and that as regards the wife-taxpayer's travelling allowance of P3,247.40 in 1952, it should not be considered as part of their income because she merely accompanied him in his business trip to New York as his secretary and, at the behest of her

husband's employer, to study and look into the details of the plans and decorations of the building intended to be constructed by his employer in its property at Dewey Boulevard. On 15 and 27 February 1954, the taxpayers paid the deficiency taxes assessed under Official Receipts Nos. 451841, 451842, 451843, 451748 and 451844 (Exhibits C, I, M, Q and Y). After hearing conducted by the Conference Staff of the Bureau of Internal Revenue on 5 October 1954 (pp. 74-85, BIR rec), on 27 May 1955 the Staff recommended to the Collector of Internal Revenue that the assessments made on 28 November 1953, Exhibits 2, 4, 6, 8, 10) be sustained except that the amount of P200 as entrance fee to the Marikina Gun and Country Club paid for the husband-taxpayer's account by his employer in 1948 should not be considered as part of the taxpayer's taxable income for that year (pp. 95-107, BIR rec). On 14 July 1955, in line with the recommendation of the Conference Staff, the Collector of Internal Revenue denied the taxpayer's request for reconsideration, except as regards the assessment of their income tax due for the year 1948, which was modified as follows:

Net income per return

P29,573.79

Add: Rent expense

7,200.00

Additional bonus for 1947 received on May 13,
1948

6,500.00

Manager's residential expense (2|29|48a|c No. 4.41)

1,400.00

Manager's residential expense (1948 profit and less)

1,849.32

Net income per investigation

P40,523.11

Less: Personal exemption

2,500.00

Net taxable income

P44,023.11

Tax due thereon

P8,506.47

Less Amount already paid

4,186.23

Deficiency Tax still due

P4,370.24

and demanded payment of the deficiency taxes of P4,370.24 for 1948, P3,662.23 for 1949, P3,023 for 1950, P2,058 for 1951 and P4,108 for 1952, 5% surcharge and 1% monthly interest thereon from 1 March 1954 to the date of payment and P80 as administrative penalty for late payment, to the City Treasurer of Manila not later than 31 July 1955 (Exhibit 14). On 30 January 1956 the taxpayers again sought a reconsideration of the denial of their request for reconsideration and offered to settle the case on a more equitable basis by increasing the amount of taxable portion of the husband-taxpayer's allowances for rental, etc. from P3,900 yearly to P4,800 yearly, which "is the value to the employee of the benefits he derived therefrom measured by what he had saved on account thereof in the ordinary course of his life * * * for which he would have spent in any case.' The taxpayers also reiterated their previous stand regarding the transportation allowance of the wife taxpayer of P3,247.40 in 1952 and requested the refund of the amounts of P3,477.18, P569.33, P1,294, P345 and P2,164, or a total of P7,858.51 (Exhibit Z). On 10 February 1956 the taxpayers again requested the Collector of Internal Revenue to refund to them the amounts allegedly paid in excess as income taxes for the years 1948 to 1952, inclusive (Exhibit Z-1). The Collector of Internal Revenue did not take any action on the taxpayer's request for refund.

On 15 February 1956 the taxpayers filed in the Court of Tax Appeals a petition to review the decision of the Collector of Internal Revenue (C.T.A. Case No. 237). After hearing, on 26 June 1957 the Court rendered judgment holding "that the inherent nature of petitioner's (the husband-taxpayer) employment as president of the American International Underwriters of the Philippines, Inc. does not require him to occupy the apartments supplied by his employer-corporation;" that, however, only the amount of P4,800 annually, the ratable value to him of the quarters furnished constitutes a part of taxable income; that since the taxpayers did not receive any benefit out of the P3,247.40 travelling expense allowance granted in 1952 to the wife-taxpayers and that she

merely undertook the trip abroad at the behest of her husband's employer, the same could not be considered as income; and that even if it were considered as such, still it could not be subject to tax because it was deductible as travel expense; and ordering the Collector of Internal Revenue to refund to the taxpayers the amount of P5,109.33 with interest from 27 February 1954, without pronouncement as to costs. The taxpayers filed a motion for reconsideration Claiming that the amount of P5,986.61 is the amount refundable to them because the amounts of P1,400 and P1,849.32 as manager's residential expenses in 1948 should not be included in their taxable net income for the reason that they are of the same nature as the rentals for the apartment, they being mainly expenses for utilities as light, water and telephone in the apartment furnished by the husband-taxpayer's employer. The Collector of Internal Revenue filed an opposition to their motion for reconsideration. He also filed a separate motion for reconsideration of the decision claiming that his assessment under review was correct and should have been affirmed. The taxpayers filed an opposition to this motion for reconsideration of the Collector of Internal Revenue; the latter, a reply thereto. On 28 September 1957 the Court denied both motions for reconsideration. On 7 October 1957 the Collector of Internal Revenue filed a notice of appeal in the Court of Tax Appeals and on 21 October 1957, within the extension of time previously granted by this Court, a petition for review (G. R. No. L-12954). On 29 October 1957 the taxpayers filed a notice of appeal in the Court of Tax Appeals and a petition for review in this Court (G. R. No. L-13049).

The Collector of Internal Revenue has assigned the following errors allegedly committed by the Court of Tax Appeals:

- The Court of Tax Appeals erred in finding that the herein respondent did not have any choice in the selection of the living quarters occupied by him.
- The Court of Tax Appeals erred in not considering the fact that respondent is not a minor company official but the President of his employer-corporation, in the appreciation of respondent's alleged lack of choice in the matter of the selection of the quarters occupied by him.
- The Court of Tax Appeals erred in giving full weight and credence to respondent's allegation, a self-serving and unsupported declaration that the ratable value to him of the living quarters and subsistence allowance was only P400.00 a month.
- The Court of Tax Appeals erred in holding that only the ratable value of P4,800.00 per annum, or P400.00 a month constitutes income to respondent.
- The Court of Tax Appeals erred in arbitrarily fixing the amount of P4,800.00 per annum, or P400.00 a month as the only amount taxable against respondent during the five tax years in question.
- The Court of Tax Appeals erred in not finding that travelling allowance in the amount of P3,247.40 constituted income to respondent and, therefore, subject to the income tax.
- The Court of Tax Appeals erred in ordering the refund of the sum of P5,109.33 with interest from February 17, 1954. (G. R. No. L-12954.)

The taxpayers have assigned the following errors allegedly Committed by the Court of Tax Appeals:

- The Court of Tax Appeals erred in its computation of the 1948 income tax and consequently in the amount that should be refunded for that year.
- The Court of Tax Appeals erred in denying our motion for reconsideration as contained in its resolution dated September 28, 1957. (G. R. No. 13049.)

The Government's appeal:

The Collector of Internal Revenue raises questions of fact. He claims that the evidence is not sufficient to support the findings and conclusion of the Court of Tax Appeals that the quarters occupied by the taxpayers were not of their choice but that of the husband-taxpayer's employer; that it did not take into consideration the fact that the husband-taxpayer is not a mere minor company official, but the highest executive of Ms employer-corporation; and that the wife-taxpayer's trip abroad in 1952 was not, as found by the Court, a business but a vacation trip. In *Collector of Internal Revenue vs. Aznar*, 102 Phil., 979; 56 Off. Gaz. 2386, this Court held that in petitions for review under section 18, Republic Act No. 1125, it may review the findings of fact of the Court of Tax Appeals.

The determination of the main issue in the case requires a review of the evidence. Are the allowances for rental of the apartment furnished by the husband-taxpayer's employer-corporation, including utilities such as light, water, telephone, etc. and the allowance for travel expenses given by his employer-corporation to his wife in 1952 part of taxable income? Section 29, Commonwealth Act No. 466, National Internal Revenue Code, provides:

"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest, in such property; also from interest, rents, dividend, securities, or the transactions of any business carried on for gain or profit, or gains, profits, an income derived; from any source whatever. (Italics supplied.)

The Court of Tax Appeals found that the husband-taxpayer "is the president of the American International Underwriters for the Philippines, Inc., a domestic corporation engaged in insurance business;" that the taxpayers "entertained officials, guests and customers of his employer-corporation, in apartments furnished by the latter and successively occupied by him as president thereof; that "In 1952, petitioner's wife, Mrs. Marie Henderson, upon request of Mr. C.V. Starr, chairman of the parent corporation of the American International Underwriters for the Philippines, Inc., undertook a trip to New York in connection with the purchase of a lot in Dewey Boulevard by petitioner's employer-corporation, the construction of a building thereon, the drawing of prospectus and plans for said building, and other related matters."

Arthur H. Henderson testified that he is the President of American International Underwriters for the Philippines, Inc., which represents a group of American insurance companies engaged in the business of general insurance except life insurance; that he receives a basic annual salary of P30,000 and allowances for houses rental and utilities like light, water, telephone, etc., that he and his wife are childless and are the only two in the family; that during the years 1948 to 1952, they lived in apartments chosen by his employer; that from 1948 to the early part of 1950, they lived at the Embassy Apartments on Dakota Street, Manila, where they had a large sala, three bedrooms, dining room, two bathrooms, kitchen and a large porch, and from the early part of 1950 to 1952, they lived at the Rosaria Apartments on the same street where they had a kitchen, sala, dining room, two bedrooms and bathrooms; that despite the fact that they were the only two in the family, they had to live in apartments of the size beyond their personal needs because as president of the corporation, he and his wife had to entertain and put up houseguests; that during all those years of 1948 to 1952, inclusive, they entertained and put up houseguests of his company's officials, guests and customers such as the president of C. V. Starr & Company, Inc., who spent four weeks in his apartment, Thomas Cocklin, a lawyer from Washington, D.C., and Manuel Elizalde, a stockholder of AIUPI; that were he not required by his employer to live in those apartments furnished to him, he said his wife would have chosen an apartment only large enough for them and spend from P300 to P400 monthly for rental; that of the allowances granted to him, only the amount of P4,800 annually, the maximum they would have spent for rental, should be considered as taxable income and the excess treated as expense of the company; and that the trip to New York undertaken by his wife in 1952, for which she was granted by his employer-corporation travelling expense allowance of P3,247.40, was made at the behest of his employer to assist its architect in the preparation of the plans for a proposed building in Manila and procurement of supplies and materials for its use,

hence the said amount should not be considered as part of taxable income. In support of his claim, letters written by his wife while in New York concerning the proposed building, inquiring about the progress made in the acquisition of the lot, and informing him of the wishes of Mr. C. V. Starr, chairman of the board of directors of the parent-corporation (Exhibits U-1, U-1-A, V, V-1 and W) and letter written by the witness to Mr. C. V. Starr concerning the proposed building (Exhibits X, X-1) were presented in evidence.

Mrs. Marie Henderson testified that for almost three years, she and her husband gave parties every Friday night at their apartment for about 18 to 20 people; that their guests were officials of her husband's employer-corporation and other corporations; that during those parties movies for the entertainment of the guests were shown after dinner; that they also entertained during luncheons and breakfast; that these involved and necessitated the services of additional servants; and that in 1952 she was asked by Mr. C. V. Starr to come to New York to take up problems concerning the proposed building and entertainment because her husband could not make the trip himself, and because "the woman of the family is closer to those problems."

The evidence presented at the hearing of the case substantially supports the findings of the Court of Tax Appeals. The taxpayers are childless and are the only two in the family. The quarters, therefore, that they occupied at the Embassy Apartments consisting of a large sala, three bedrooms, dining room, two bathrooms, kitchen and a large porch, and at the Rosaria Apartments consisting of a kitchen, sala, dining room, two bedrooms and a bathroom, exceeded their personal needs. But the exigencies of the husband-taxpayer's high executive position, not to mention social standing, demanded and compelled them to live in a more spacious and pretentious quarters like the ones they had occupied. Although entertaining and putting up houseguests and guests of the husband-taxpayer's employer-corporation were not his predominant occupation as president, yet he and his wife had to entertain and put up houseguests in their apartments. That is why his employer-corporation had to grant him allowances for rental and utilities in addition to his annual basic salary to take care of those extra expenses for rentals and utilities in excess of their personal needs. Hence, the fact that the taxpayers had to live or did not have to live in the apartments chosen by the husband-taxpayer's employer-corporation is of no moment, for no part of the allowances in question redounded to their personal benefit or was retained by them. Their bills for rental and utilities were paid directly by the employer-corporation to the creditors (Exhibits AA to DDD, inclusive; pp. 104, 170-193, t.s.n.). Nevertheless, as correctly held by the Court of Tax Appeals, the taxpayers are entitled only to a ratable value of the allowances in question, and only the amount of P4,800 annually, the reasonable amount they would have spent for house rental and utilities such as light, water, telephone, etc. should be the amount subject to tax, and the excess considered as expenses of the corporation.

Likewise, the findings of the Court of Tax Appeals that the wife-taxpayer had to make a trip to New York at the behest of her husband's employer-corporation to help in drawing up the plans and specifications of a proposed building, is also supported by the evidence. The parts of the letters written by the wife-taxpayer to her husband while in New York and the letter written by the husband-taxpayer to Mr. C. V. Starr support the said findings (Exhibits U-2, V-1, W-1, X). No part of the allowance for travelling expenses redounded to the benefit of the taxpayers. Neither was a part thereof retained by them. The fact that she had herself operated on for tumors while in New York was, but incidental to her stay there and she must have merely taken advantage of her presence in that city to undergo the operation.

The taxpayers' appeal:

The taxpayers claim that the Court of Tax Appeals erred in considering the amount of P1,400 and P1,849.32, or a total of P3,249.32, for "manager's residential expense" in 1948 as taxable income despite the fact "that they were of the same nature as the rentals for the apartment, they being expenses for utilities, such as light, water and telephone necessarily incidental to the apartment furnished to him by his employer."

Mrs. Cresencia Perez Ramos, an examiner of the Bureau of Internal Revenue who examined the books of account of the American International Underwriters for the Philippines, Inc., testified that the total amount of P3,249.32 was reflected in its books as "living expenses of Mr. and Mrs. Arthur Henderson in the quarters they occupied in 1948;" and that "the amount of P1,400 was included as manager's residential expense while the amount of P1,849.32 was entered as profit and loss account."

Buenaventura Loberiza, acting head of the accounting department of the American International Underwriters for the Philippines, Inc., testified that rentals utilities, water, telephone and electric bills of executive of the corporation were entered in the books of account as "subsistence allowances and expenses;" that there was a separate account for salaries and wages of employees and officers; and that expenses for rentals and other utilities were not charged to salary accounts.

The taxpayers' claim is supported by the evidence. The total amount of P3,249.32 "for manager's residential expense" in 1948 should be treated as rentals for apartments and utilities and should not form part of the ratable value subject to tax.

The computation made by the taxpayers is correct. Adding to the amount of P29,573.79, their net income per return, the amounts of P6,500, the bonus received in 1948, and P4,800, the taxable ratable value of the allowances, brings up their gross income to P40,873.79. Deducting therefrom the amount of P2,500 for personal exemption, the amount of P38,373.79 is the amount subject to income tax. The income tax due on this amount is P6,957.19 only. Deducting the amount of income tax due, P6,957.19, from the amount already paid, P8,562.47 (Exhibits B, B-1, C), the amount of P1,605.28 is the amount refundable to the taxpayers. Add this amount to P569.33, P1,294.00, P354.00 and P2,164.00, refundable to the taxpayers for 1949, 1950, 1951 and 1952, and the total is P5,986.61.

The judgment under review is modified as above indicated. The Collector of Internal Revenue is ordered to refund to the taxpayers the sum of P5,986.61, without pronouncement as to costs.

Bengzon, Acting C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes and Dizon, JJ., concur.

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