

EMILIO Y. HILADO, PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-9408. October 31, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On March 31, 1952, petitioner filed his income tax return for 1951 with the treasurer of Bacolod City wherein he claimed, among other things, the amount of P12,837.65 as a deductible item from his gross income pursuant to General Circular No. V-123 issued by the Collector of Internal Revenue. This circular was issued pursuant to certain rules laid down by the Secretary of Finance. On the basis of said return, an assessment notice demanding the payment of P9,419 was sent to petitioner, who paid the tax in monthly installments, the last payment having been made on January 2, 1953.

Meanwhile, on August 30, 1952, the Secretary of Finance, through the Collector of Internal Revenue, issued General Circular No. V-139 which not only revoked and declared void his general Circular No. V-123 but laid down the rule that losses of property which occurred during the period of World War II from fires, storms, shipwreck or other casualty, or from robbery, theft, or embezzlement are deductible in the year of actual loss or destruction of said property. As a consequence, the amount of P12,837.65 was disallowed as a deduction from the gross income of petitioner for 1951 and the Collector of Internal Revenue demanded from him the payment of the sum of P3,546 as deficiency income tax for said year. When the petition for reconsideration filed by petitioner was denied, he filed a petition for review with the Court of Tax Appeals. In due time, this court rendered decision affirming the assessment made by respondent Collector of Internal Revenue. This is an appeal from said decision.

It appears that petitioner claimed in his 1951 income tax return the deduction of the sum of P12,837.65 as a loss consisting in a portion of his war damage claim which had been duly approved by the Philippine War Damage Commission under the Philippine Rehabilitation Act of 1946 but which was not paid and never has been paid pursuant to a notice served upon him by said Commission that said part of his claim will not be paid until the United States Congress should make further appropriation. He claims that said amount of P12,837.65 represents a "business asset" within the meaning of said Act which he is entitled to deduct as a loss in his return for 1951. This claim is untenable.

To begin with, assuming that said amount represents a portion of the 75% of his war damage claim which was not paid, the same would not be deductible as a loss in 1951 because, according to petitioner, the last installment he received from the War Damage Commission, together with the notice that no further payment would be made on his claim, was in 1950. In the circumstance, said amount would at most be a proper deduction from his 1950 gross income. In the second place, said amount cannot be considered as a "business asset" which can be deducted as a loss in contemplation of law because its collection is not enforceable as a matter of right, but is dependent merely upon the generosity and magnanimity of the U. S. government. Note that, as of the end of 1945, there was absolutely no law under which petitioner could claim compensation for the destruction of his properties during the battle for the liberation of the Philippines. And under the Philippine Rehabilitation Act of 1946, the payments of

claims by the War Damage Commission merely depended upon its discretion to be exercised in the manner it may see fit, but the non-payment of which cannot give rise to any enforceable right, for, under said Act, "All findings, of the Commission concerning the amount of loss or damage sustained, the cause of such loss or damage, the persons to whom compensation pursuant to this title is payable, and the value of the property lost or damaged, shall be conclusive and shall not be reviewable by any court", (section 113).

It is true that under the authority of section 338 of the National Internal Revenue Code the Secretary of Finance, in the exercise of his administrative powers, caused the issuance of General Circular No. V-123 as an implementation or interpretative regulation of section 30 of the same Code, under which the amount of P12,837.65 was allowed to be deducted "in the year the last installment was received with notice that no further payment would be made until the United States Congress makes further appropriation therefor", but such circular was found later to be wrong and was revoked. Thus, when doubts arose as to the soundness or validity of such circular, the Secretary of Finance sought the advice of the Secretary of Justice who, accordingly, gave his opinion the pertinent portion of which reads as follows:

"Yet it might be argued that war losses were not included as deductions for the year when they were sustained because the taxpayers had prospects that losses would be compensated for by the United States Government; that since only uncompensated losses are deductible, they had to wait until after the determination by the Philippine War Damage Commission as to the compensability in part or in whole of their war losses so that they could exclude from the deductions those compensated for by the said Commission; and that, of necessity, such determination could be complete only much later than in the year 'when the loss was sustained. This contention falls to the ground when it is considered that the Philippine Rehabilitation Act which authorized the payment by the United States Government of war losses suffered by property owners in the Philippines was passed only on August 30, 1946, long after the losses were sustained. It cannot be said therefore, that the property owners had any. conclusive assurance during the years said losses were sustained, that the compensation was to be paid therefor. Whatever assurance they could have had,⁴ could have been based only on some information less reliable and less conclusive than the passage of the Act itself. Hence, as diligent property owners, they should adopt the safest alternative by considering such losses deductible during the year when they were sustained."

In line with this opinion, the Secretary of Finance, through the Collector of Internal Revenue, issued General Circular No. V-139 which not only revoked and declared void his previous Circular No. V—123 but laid down the rule that losses; of property which occurred during the period of World War II from fires, storms, shipwreck or other casualty, or from robbery, theft, or embezzlement are deductible for income tax purposes in the year of actual destruction of said property. We can hardly argue against this opinion. Since we have already stated that the amount claimed does not represent a "business asset" that may be deducted as a loss in 1951, it is clear that the loss of the corresponding asset or property could only be deducted in the year it was actually sustained. This is in line with section 30 (d) of the National Internal Revenue Code which prescribes that losses sustained are allowable as deduction only within the corresponding taxable year.

Petitioner's contention that during the last war and as a consequence of enemy occupation in the Philippines "there was no taxable year" within the meaning of our internal revenue laws because during that period they were unenforceable, is without merit. It is well known that our internal revenue laws are not political in nature and as such were continued in force during the period of enemy occupation and in effect were actually enforced by the occupation government. As a matter of fact, income tax returns were filed during that period and income tax payment were effected and considered valid and legal. Such tax laws are deemed to be the laws of the occupied territory and not of the occupying enemy.

"Furthermore, it is a legal maxim, that excepting that of a political nature, 'Law once established continues

until changed by some competent legislative power. It is not changed merely by change of sovereignty.' (Joseph H. Beale, Cases on Conflict of Laws, III, Summary section 9, citing Commonwealth vs. Chapman, 13 Met., 68.) As the same author says, in his Treatise on the Conflict of Laws (Cambridge, 1916, section 131): 'There can be no break or interregnum in law. From the time the law comes into existence with the first-felt corporateness of a primitive people it must last until the final disappearance of human society. Once created, it persists until a change takes place, and when changed it continues in such changed condition until the next change and so forever. Conquest or colonization is impotent to bring law to an end; inspite of change of constitution, the law continues unchanged until the new sovereign by legislative act creates a change.'" (Co Kim Chan vs. Valdez Tan Keh and Dizon, 75 Phil., 113, 142-143.)

It is likewise contended that the power to pass upon the validity of General Circular No. V-123 is vested exclusively in our courts in view of the principle of separation of powers and, therefore, the Secretary of Finance acted without valid authority in revoking it and approving in lieu thereof General Circular No. V-139. It cannot be denied, however, that; the Secretary of Finance is vested with authority to revoke, repeal or abrogate the acts or previous rulings of his predecessor in office because the construction of a statute by those administering it is not binding on their successors if thereafter the latter become satisfied that a different construction should be given. [Association of Clerical Employees vs. Brotherhood of Railways & Steamship Clerks, 85 F. (2d) 152, 109 A.L.R., 345.]

"When the Commissioner determined in 1937 that the petitioner was not exempt and never had been, it was his duty to determine, assess and collect the tax due for all years not barred by the statutes of limitation. The conclusion reached and announced by his predecessor in 1924 was not binding upon him. It did not exempt the petitioner from tax, This same point was decided in this way in Stanford University Bookstore, 29 B. T. A., 1280; affd., 83 Fed. (2d) 710." (Southern Maryland Agricultural Fair Association vs. Commissioner of Internal Revenue, 40 B. T. A., 549, 554),

With regard to the contention that General Circular No. V-139 cannot be given retroactive effect because that would affect and obliterate the vested right acquired by petitioner under the previous circular, suffice it to say that General Circular No. V-123, having been, issued on a wrong construction of the law, cannot give rise to a vested right that can be invoked by a taxpayer. The reason, is obvious: a vested right cannot spring from a wrong interpretation. This is too clear to require elaboration.

"It seems too clear for serious argument that an administrative officer can not change a law enacted by Congress. A regulation that is merely an interpretation of the statute when once determined to have been erroneous becomes nullity. An erroneous construction of the law by the Treasury Department or the collector of internal revenue does not preclude or estop the government from collecting a tax which is legally due." (Ben Stocker, et al., 12 B. T. A., 1351.)

"Art. 2254.—No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." (Article 2254, New Civil Code.)

Wherefore, the decision appealed from is affirmed Without pronouncement as to costs.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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