

THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. ENRIQUE AVELINO, RESPONDENT.

G.R. No. L-14847. September 19, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The Commissioner of Internal Revenue seeks a review of the decision of the Court of Tax Appeals in the above entitled case, which reversed that of said officer requiring Enrique Avelino to pay the sum of P22,123.55, as deficiency income tax for 1947, including surcharge, interest and compromise penalties, computed as follows:

"Net income per investigation (Networth method):

Investment in the National Livestock Produce

Corporation

P60,000.00

Personal and Living expenses

4,500.00

Total

P64,500.00

Less: Personal exemption

4,500.00

Taxable income

P60,000.00

Tax due thereon

P13,180.00

50% surcharge

988.50

1% monthly interest from 7/13/54 to 2/15/55

1,285.05

Compromise for late payment

40.00

Compromise for failure to file return

40.00

Total amount due as of February 15,

1955

P22,123.55"

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The corresponding assessment, made on the networth method, was based upon an investment in the sum of P60,000 made by Enrique Avelino in the National Livestock Produce Corporation, organized in June 1947. He having filed no income tax return for such year, said amount was considered as his unreported income therefor. Upon the other hand, Enrique Avelino maintained that said sum of P60,000 had been lent to him by a naturalized

Filipino, named Severino Sayque, who returned to China in 1948 or 1949 and has not been heard from since then. The only issue is thus whether or not such defense has been sufficiently established. The Commissioner decided the issue in the negative, but the Court of Tax Appeals held otherwise, and, accordingly, rendered the aforementioned decision, the review of which is now sought by the Government.

As stated by the Court of Tax Appeals, the evidence for Avelino:

"* * * tends to show that prior to the organization of the National Livestock Produce Corporation in June, 1947, he was merely a 'rancher' in his father's ranch; that he had no salary as such 'rancher'; that he was merely provided with a 'house to live in and other expenses'; that his additional means of livelihood was the salary of his wife who was employed in the former PRATA (later PRISCO) with a salary of about P400.00 per month; that he, with seven others, organized in June, 1947 the National Livestock Produce Corporation for the purpose of importing cattle from Australia; that at the time of its organization, he had no money; that in order that his services could be availed of as president or manager of the corporation, he was given a loan of P60,000 by one Severino Sayque, another organizer of the corporation; that the loan was evidenced by a promissory note, a copy of which was presented in evidence; that the loan was guaranteed by Dr. Fernando M. Chan, also an organizer of the corporation, who was presented as witness and who admitted that he guaranteed the loan; that the corporation was a total failure and had to be dissolved after the death of President Roxas; that at the time of its dissolution the corporation had absolutely no funds or assets; and that the loan that he secured from Sayque has not yet been paid, the creditor not having returned from China until now, and even if the creditor were to demand payment of the loan, he can not pay the same because he has no money or property of any kind with which to discharge his obligation."

Upon the other hand, the Commissioner of Internal Revenue, in the language of the decision appealed from, "* * * refused to believe that" Avelino had "obtained a loan from Sayque and insists that the sum of P60,000.00 which" Avelino "invested in the National Livestock Produce Corporation was income earned by" him in 1947. The decision of said officer was "apparently based upon the findings and recommendation of the Conference Staff of the Bureau of Internal Revenue which refused to believe the alleged loan on the following grounds"; (1) that Avelino "failed to present the promissory note when he was interviewed by revenue agents in connection with said investment; (2) that Sayque, the alleged creditor, was not in a financial position to extend the loan; (3) that it is incredible that Sayque should give a loan of P60,000.00 without requiring a solid security to guarantee its return and payment; (4) that no attempt has been made by the creditor or his family to demand payment of the loan;" (5) that Avelino "did not know Dr. Fernando M. Chan well enough to 'persuade the latter to guarantee an obligation amounting to P60,000.00,' and (6) that because of Dr. Chan's professional and social standing and family relations and in view of his apparent closeness to" Enrique Avelino, Dr. Chan "was in a better and more secure position than Mr. Sayque to extend the loan to Mr. Avelino; and it was 'therefore exceedingly strange and unusual that the latter should choose, if at all, to secure the loan not from Dr. Chan but from Mr. Sayque who, to him, was practically a stranger.' "

The Court of Tax Appeals examined these grounds separately and held that each was inconclusive on the issue for determination, because: (a) when interviewed by internal Revenue agents, Avelino was not asked to produce the document evidencing the alleged loan; (b) altho Severino Sayque had reported that he had in 1946 and 1947 a net income of P27,905.10 and P9,255.79, respectively, this does not prove—in the opinion of said court—the incapacity of Sayque to lend P60,000 to Avelino in the year 1947, apart from the sum of P40,000 directly invested by him (Sayque) as one of the organizers of the corporation; (c) Sayque saw to it, allegedly, that said sum of P60,000 was immediately turned over to the treasurer of the National Livestock Produce Corporation; (d) moreover, the alleged note of Enrique Avelino carried the personal guarantee of Dr. Fernando M. Chan; (e) the absence of demand for the payment of the alleged loan of P60,000 is not without sufficient justification, for, having returned to China in 1948 or 1949, Sayque must have died or been prevented from returning to the Philippines for reasons beyond his

control, apart from the fact that he knew that Enrique Avelino was without money or property and that the loan was payable within two (2) years or as soon as his business prospered and made profits; and (f) the last two arguments—to the effect that Enrique Avelino did not know Dr. Chan well enough to persuade the latter to guarantee the loan and that, considering the financial position of Dr. Chan, the loan should have been obtained from him, instead of from Sayque—do not prove that the loan was not in fact given by Sayque, for "the other organizers of the corporation had faith and confidence in" Avelino, inasmuch as "he was the son of the President of the Senate at the time" and "this was sufficient inducement * * * to trust" Avelino.

We find ourselves unable to share this view. To begin with, the relation of paternity and filiation between the then Senate President and Enrique Avelino was not sufficient for Sayque to trust the latter. Secondly, Enrique Avelino was a mere rancher in his father's farm. As such rancher, he had no salary, and was provided only with "a house to live in and other expenses." He had no income except the P400 monthly salary of his wife as a PRATA (now PRISCO) employee. He had, and has, no money or property whatsoever. Under these circumstances, it is not reasonable to believe that Sayque, who hardly knew Enrique Avelino, would be so naive or reckless as to "trust" him to the extent, not only of lending him P60,000.00, without a mortgage by way of guarantee, but, also, of entrusting to him the management of a corporation in which he (Sayque) had invested P40,000 in his own name. Neither does the normal course of events justify the belief that Dr. Chan would similarly repose such faith and confidence in Enrique Avelino, under the facts adverted to above, as to guaranty personally the payment of said sum of P60,000, aside from placing his (Dr. Chan's) own investment in said corporation, under the management of Enrique Avelino, who does not appear to have had any experience in the importation of cattle. Indeed, the records show that the corporation was a total failure and had absolutely no funds whatsoever when it was dissolved upon the death of President Roxas. Then, too, if the bare relationship of Enrique Avelino to the then Senate President were sufficient to induce Sayque and Dr. Chan to take the risk of losing the sum of P60,000 allegedly lent to Avelino, aside from their individual investments in the corporation, it would logically follow that said relationship similarly sufficed to induce them to make outright donations, not only of said sum of P60,000, but, likewise, of the amount of their respective shares in the corporation.

In any event, regardless of whether or not the factors relied upon by the Commissioner of Internal Revenue may singly be susceptible of some explanation, suggestive of a remote possibility that Avelino's theory might be true, we are satisfied that the collective effect of said factors, taken in relation with other facts and circumstances obtaining in the case at bar, fully justify the rejection of said theory.

Another reason relied upon by the Court of Tax Appeals in reversing the decision of the Commissioner of Internal Revenue is that, in making the questioned assessment, the latter had failed to establish either the opening net worth of Enrique Avelino in 1947 or the source of the income in question (P60,000.00). However, Avelino's net worth at the beginning of 1947 was nil, for it is an undisputed fact that he then had no money or property of any kind whatsoever. Besides, we have already ruled that:

"In civil cases, as the one at bar, it has been held that the application of the net worth method does not require identification of the sources of the alleged unreported income and that the determination of the tax deficiency by the government is *prima facie* correct". (Eugenio Perez vs. CIR et al., G. R. No. L-10507, May 30, 1958.)

In the present case, the *prima facie* correctness of the assessment in question is bolstered up by the undisputed fact that Enrique Avelino has invested P60,000 in the National Livestock Produce Corporation in 1947. It was, therefore, incumbent upon him to establish that said sum had been merely borrowed by him. His evidence thereon is, however, far from satisfactory.

Wherefore, the decision of the Court of Tax Appeals is hereby reversed, and another one shall be entered affirming that of the Commissioner of Internal Revenue, except as to the compromise penalties, aggregating

P80.00, imposed by said officer, which should be eliminated (Collector of Internal Revenue vs. University of Santo Tomas, and, University of Santo Tomas vs. Collector of Internal Revenue, L-11274 and L-11280, promulgated on November 28, 1958), with costs against Enrique Avelino. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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