LORENZO T. OÑA, AND HEIRS OF JULIA BUÑALES, NAMELY: RODOLFO B. OÑA, MARIANO B. OÑA, LUZ B. OÑA, VIRGINIA B. OÑA AND LORENZO B. OÑA, JR., PETITIONERS, VS. THE COMMISSIONER OF IN...

G.R. No. L-19342. May 25, 1972

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the decision of the Court of Tax Appeals in CTA Case No. 617, similarly entitled as above, holding that petitioners have constituted an unregistered partnership and are, therefore, subject to the payment of the deficiency corporate income taxes assessed against them by respondent Commissioner of Internal Revenue for the years 1955 and 1956 in the total sum of P21,891.00, plus 5% surcharge and 1% monthly interest from December 15, 1958, subject to the provisions of Section 51 (e) (2) of the Internal Revenue Code, as amended by Section 8 of Republic Act No. 2343 and the costs of the suit,[1] as well as the resolution of said court denying petitioners' motion for reconsideration of said decision.

The facts are stated in the decision of the Tax Court as follows:

> "Julia Buñales died on March 23, 1944, leaving as heirs her surviving spouse, Lorenzo T. Oña and her five children. In 1948, Civil Case No. 4519 was instituted in the Court of First Instance of Manila for the settlement of her estate. Later, Lorenzo T. Oña, the surviving spouse was appointed administrator of the estate of said deceased (Exhibit 3, pp. 34-41, BIR rec.). On April 14, 1949, the administrator submitted the project of partition, which was approved by the Court on May 16, 1949 (See Exhibit K). Because three of the heirs, namely Luz, Virginia and Lorenzo, Jr., all surnamed Oña, were still minors when the project of partition was approved, Lorenzo T. Oña, their father and administrator of the estate, filed a petition in Civil Case No. 9637 of the Court of First Instance of Manila for appointment as guardian of said minors. On November 14, 1949, the Court appointed him guardian of the persons and property of the afore-named minors (See p. 3, BIR rec.).
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> "The project of partition (Exhibit K; see also pp. 77-70, BIR rec.) shows that the heirs have undivided one-half (1/2) interest in ten parcels of land with a total assessed value of P87,860.00, six houses with a total assessed value of P17,590.00 and an undetermined amount to be collected from the War Damage Commission. Later, they received from said Commission the amount of P50,000.00, more or less. This amount was not divided among them but was used in the rehabilitation of properties owned by them in common (t.s.n. p. 46). Of the ten parcels of land aforementioned, two were acquired after the death of the decedent with money borrowed from the Philippine Trust Company in the amount of P72,173.00 (t.s.n., p. 24; Exhibit 3, pp. 34-31, BIR rec.).
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> "The project of partition also shows that the estate shares equally with Lorenzo T. Oña, the administrator thereof, in the obligation of P94,973.00, consisting of loans contracted by the latter with the approval of the Court (see p. 3 of Exhibit K; or see p. 74, BIR rec.).
>
> "Although the project of partition was approved by the Court on May 16, 1949, no attempt was made to divide the properties therein listed. Instead, the properties remained under the management of Lorenzo T. Oña who

used said properties in business by leasing or selling them and investing the income derived therefrom and the proceeds from the sales thereof in real properties and securities. As a result, petitioners' properties and investments gradually increased from P105,450.00 in 1949 to P480,005.20 in 1956 as can be gleaned from the following year-end balances:

"Year

Investment Account

Land Account

Building Account

1949

P87,860

P 17,590.00

1950

P 24,657.65

128,566.72

96,076.26

1951

51,301.31

120,349.28

110,605.11

1952

67,927.52

87,065.28

152,674.39

1953

61,258.27

84,925.68

161,463.83

1954

63,623.37

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99,001.20

167,962.04

1955

100,786.00

120,249.78

169,262.52

1956

175,028.68

135,714.68

169,262.52

(See Exhibits 3 & K; t.s.n., pp. 22, 25-26, 40, 50, 102-104).

"From said investments and properties petitioners derived such incomes as profits from installment sales of subdivided lots, profits from sales of stocks, dividends, rentals and interests (see p. 3 of Exhibit 3; p. 32, BIR rec.; t.s.n., pp. 37-38). The said incomes are recorded in the books of account kept by Lorenzo T. Oña, where the corresponding shares of the petitioners in the net income for the year are also shown. Every year, petitioners returned for income tax purposes their shares in the net income derived from said properties and securities and/or from transactions involving them (Exhibit 3, supra; t.s.n., pp. 25-26). However, petitioners did not actually receive their shares in the yearly income. (t.s.n., pp. 25-26, 40, 98, 100). The income was always left in the hands of Lorenzo T. Oña who, as heretofore pointed out, invested them in real properties and securities. (See Exhibit 3, t.s.n., pp. 50, 102-104).

"On the basis of the foregoing facts, respondent (Commissioner of Internal Revenue) decided that petitioners formed an unregistered partnership add therefore, subject to the corporate income tax, pursuant to Section 24, in relation to Section 84(b), of the Tax Code. Accordingly, he assessed against the petitioners the amounts of P8,092.00 and P13,899.00 as corporate income taxes for 1955 and 1956, respectively. (See Exhibit 5, amended by Exhibit 17, pp. 50 and 86, BIR rec.). Petitioners protested against the assessment and asked for reconsideration of the ruling of respondent that they have formed an unregistered partnership. Finding no merit in petitioners' request, respondent denied it (See Exhibit 17, p. 86, BIR rec.). (See pp. 1-4, Memorandum for Respondent, June 12, 1961).

"The original assessment was as follows:

"1955

"Net income as per

investigation..... P 40,209.89

Income tax due thereon..... 8,042.00

25% surcharge..... 2,010.50

Compromise for non-filing..... 50.00

Total..... P10,102.50

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"1956

"Net income as per

investigation..... P69,245.23

Income tax due thereon..... 13,849.00

25% surcharge..... 3,462.25

Compromise for non-filing..... 50.00

TotaL..... P17,361.25

(See Exh. 13, page 50, BIR records)

"Upon further consideration of the case, the 25% surcharge was eliminated in line with the ruling of the Supreme Court in Collector vs. Batangas Transportation Co., G.R. No. L-9692, Jan. 6, 1958, so that the questioned assessment refers solely to the income tax proper for the years 1955 and 1956 and the 'Compromise for non-filing,' the latter item obviously referring to the compromise in lieu of the criminal liability for failure of petitioners to file the corporate income tax returns for said years, (See Exh. 17, page 86, BIR records)." (Pp. 1-3, Annex C to Petition)

Petitioners have assigned the following as alleged errors of the Tax Court:

"I

"THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONERS FORMED AN UNREGISTERED PARTNERSHIP;

"II

"THE COURT OF TAX APPEALS ERRED IN NOT HOLDING THAT THE PETITIONERS WERE CO-OWNERS OF THE PROPERTIES INHERITED AND (THE) PROFITS DERIVED FROM TRANSACTIONS THEREFROM (sic);

"III

"THE COURT OF TAX APPEALS ERRED IN HOLDING THAT PETITIONERS WERE LIABLE FOR CORPORATE INCOME TAXES FOR 1955 AND 1956 AS AN UNREGISTERED PARTNERSHIP;

"IV

"ON THE ASSUMPTION THAT THE PETITIONERS CONSTITUTED AN UNREGISTERED PARTNERSHIP, THE COURT OF TAX APPEALS ERRED IN NOT HOLDING THAT THE PETITIONERS WERE AN UNREGISTERED PARTNERSHIP TO THE EXTENT ONLY THAT THEY INVESTED THE PROFITS FROM THE PROPERTIES OWNED IN COMMON AND THE LOANS RECEIVED USING THE INHERITED PROPERTIES AS COLLATERALS;

"V

"ON THE ASSUMPTION THAT THERE WAS AN UNREGISTERED PARTNERSHIP, THE COURT OF TAX APPEALS ERRED IN NOT DEDUCTING THE VARIOUS AMOUNTS PAID BY THE PETITIONERS AS INDIVIDUAL INCOME TAX ON THEIR RESPECTIVE SHARES OF THE PROFITS ACCRUING FROM THE PROPERTIES OWNED IN COMMON, FROM THE DEFICIENCY TAX OF THE UNREGISTERED PARTNERSHIP."

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In other words, petitioners pose for our resolution the following questions: (1) Under the facts found by the Court of Tax Appeals, should petitioners be considered as co-owners of the properties inherited by them from the deceased Julia Buñales and the profits derived from transactions involving the same, or, must they be deemed to have formed an unregistered partnership subject to tax under Sections 24 and 84(b) of the National Internal Revenue Code? (2) Assuming they have formed an unregistered partnership, should this not be only in the sense that they invested as a common fund the profits earned by the properties owned by them in common and the loans granted to them upon the security of the said properties, with the result that as far as their respective shares in the inheritances are concerned, the total income thereof should be considered as that of co-owners and not of the unregistered partnership? And (3) assuming again that they are taxable as an unregistered partnership, should not the various amounts already paid by them for the same years 1955 and 1956 as individual income taxes on their respective shares of the profits accruing from the properties they owned in common be deducted from the deficiency corporate taxes, herein involved, assessed against such unregistered partnership by the respondent Commissioner?

Pondering on these questions, the first thing that has struck the Court is that whereas petitioners' predecessor in interest died way back on March 23, 1944 and the project of partition of her estate was judicially approved as early as May 16, 1949, and presumably petitioners have been holding their respective shares in their inheritance since those dates admittedly under the administration or management of the head of the family, the widower and father Lorenzo T. Oña, the assessment in question refers to the later years 1955 and 1956. We believe this point to be important because, apparently, at the start, or in the years 1944 to 1954, the respondent Commissioner of Internal Revenue did treat petitioners as co-owners, not liable to corporate tax, and it was only from 1955 that he considered them as having formed an unregistered partnership. At least, there is nothing in the record indicating that an earlier assessment had already been made. Such being the case, and We see no reason how it could be otherwise, it is easily understandable why petitioners' position that they are co-owners and not unregistered co-partners, for the purposes of the impugned assessment, cannot be upheld. Truth to tell, petitioners should find comfort in the fact that they were not similarly assessed earlier by the Bureau of Internal Revenue.

The Tax Court found that instead of actually distributing the estate of the deceased among themselves pursuant to the project of partition approved in 1949, "the properties remained under the management of Lorenzo T. Oña who used said properties in business by leasing or selling them and investing the income derived therefrom and the proceeds from the sales thereof in real properties and securities," as a result of which said properties and investments steadily increased yearly from P87,860.00 in "land account" and P17,590.00 in "building account" in 1949 to P175,028.68 in "investment account," P135,714.68 in "land account" and P169,262.52 in "building account" in 1956. And all these became possible because, admittedly, petitioners never actually received any share of the income or profits from Lorenzo T. Oña and instead, they allowed him to continue using said shares as part of the common fund for their ventures, even as they paid the corresponding income taxes on the cases of their respective shares of the profits of their common business as reported by said Lorenzo T. Oña.

It is thus incontrovertible that petitioners did not, contrary to their contention, merely limit themselves to holding the properties inherited by them. Indeed, it is admitted that during the material years herein involved, some of the said properties were sold at considerable profit, and that with said profit, petitioners engaged, thru Lorenzo T. Oña, in the purchase and sale of corporate securities. It is likewise admitted that all the profits from these ventures were divided among petitioners proportionately in accordance with their respective shares in the inheritance. In these circumstances, it is Our considered view that from the moment petitioners allowed not only the incomes from their respective shares of the inheritance but even the inherited properties themselves to be used by Lorenzo T. Oña as a common fund in undertaking several transactions or in business, with the intention of deriving profit to be shared by them proportionally, such act was tantamount to actually contributing such incomes to a common

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fund and, in effect, they thereby formed an unregistered partnership within the purview of the above-mentioned provisions of the Tax Code.

It is but logical that in cases of inheritance, there should be a period when the heirs can be considered as co-owners rather than unregistered co-partners within the contemplation of our corporate tax laws aforementioned. Before the partition and distribution of the estate of the deceased, all the income thereof does belong commonly to all the heirs, obviously, without them becoming thereby unregistered co-partners, but it does not necessarily follow that such status as co-owners continues until the inheritance is actually and physically distributed among the heirs, for it is easily conceivable that after knowing their respective shares in the partition, they might decide to continue holding said shares under the common management of the administrator or executor or of anyone chosen by them and engage in business on that basis. Withal, if this were to be allowed, it would be the easiest thing for heirs in any inheritance to circumvent and render meaningless Sections 24 and 84(b) of the National Internal Revenue Code.

It is true that in Evangelista vs. Collector, 102 Phil. 140, it was stated, among the reasons for holding the appellants therein to be unregistered co-partners for tax purposes, that their common fund "was not something they found already in existence" and that "[it]was not a property inherited by them pro indiviso," but it is certainly far fetched to argue therefrom, as petitioners are doing here, that ergo, in all instances where an inheritance is not actually divided, there can be no unregistered co-partnership. As already indicated, for tax purposes, the co-ownership of inherited properties is automatically converted into an unregistered partnership the moment the said common properties and/or the incomes derived therefrom are used as a common fund with intent to produce profits for the heirs in proportion to their respective shares in the inheritance as determined in a project partition either duly executed in an extrajudicial settlement or approved by the court in the corresponding testate or intestate proceeding. The reason for this is simple. From the moment of such partition, the heirs are entitled already to their respective definite shares of the estate and the incomes thereof, for each of them to manage and dispose of as exclusively his own without the intervention of the other heirs, and, accordingly, he becomes liable individually for all taxes in connection therewith. If after such partition, he allows his share to be held in common with his co-heirs under a single management to be used with the intent of making profit thereby in proportion to his share, there can be no doubt that, even if no document or instrument were executed for the purpose, for tax purposes, at least, an unregistered partnership is formed. This is exactly what happened to petitioners in this case.

In this connection, petitioners' reliance on Article 1769, paragraph (3), of the Civil Code, providing that: "The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived," and, for that matter, on any other provision of said code on partnerships is unavailing. In Evangelista, supra, this Court clearly differentiated the concept of partnerships under the Civil Code from that of unregistered partnerships which are considered as "corporations" under Sections 24 and 84(b) of the National Internal Revenue Code. Mr. Justice Roberto Concepcion, now Chief Justice, elucidated on this point thus:

> "To begin with, the tax in question is one imposed upon 'corporations', which, strictly speaking, are distinct and different from 'partnerships'. When our Internal Revenue Code includes 'partnerships' among the entities subject to the tax on 'corporations', said Code must allude, therefore, to organizations which are notnecessarily 'partnerships', in the technical sense of the term. Thus, for instance, section 24 of said Code exempts from the aforementioned tax 'duly registered general partnerships', which constitute precisely one of the most typical forms of partnerships in this jurisdiction. Likewise, as defined in section 84(b) of said Code, 'the term corporation includes, partnerships, no matter how created or organized.' This qualifying expression clearly indicates that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one could be deemed constituted for purposes of

> the tax on corporations. Again, pursuant to said section 84(b), the term 'corporation' includes, among other, 'joint accounts, (cuentasenparticipation)' and 'associations', none of which has a legal personality of its own, independent of that of its members. Accordingly, the lawmaker could not have regarded that personality as a condition essential to the existence of the partnerships therein referred to. In fact, as above stated, 'duly registered general co-partnerships' which are possessed of the aforementioned personality have been expressly excluded by law (sections 24 and 84 [b] from the connotation of the term 'corporation.' * * *
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> "* * * * * *
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> "Similarly, the American Law
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> '* * * provides itsownconcept of a partnership. Under the term 'partnership' it includes notonly a partnership as known at common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation, or venture, and which is not, within the meaning of the Code, a trust, estate, or a corporation. * * *.' (7A Merten's Law of Federal Income Taxation, p. 789; Italics supplied.)
>
> 'The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on. * * *.' (8 Merten's Law of Federal Income Taxation, p. 562 Note 63; italics ours.)

"For purposes of the tax on corporations, ourNational Internal Revenue Code, includesthesepartnerships — with the exception only of duly registered general co-partnerships — within the purview of the term 'corporation.' It is, therefore, clear to our mind that petitioners herein constitute a partnership, insofar as said Code is concerned, and are subject to the income tax for corporations."

We reiterated this view, thru Mr. Justice Fernando, in Reyes vs. Commissioner of Internal Revenue, G.R. Nos. L-24020-21, July 29, 1968, 24 SCRA 198, wherein the Court ruled against a theory of co-ownership pursued by appellants therein.

As regards the second question raised by petitioners about the segregation, for the purposes of the corporate taxes in question, of their inherited properties from those acquired by them subsequently, We consider as justified the following ratiocination of the Tax Court in denying their motion for reconsideration:

> "In connection with the second ground, it is alleged that, if there was an unregistered partnership, the holding should be limited to the business engaged in apart from the properties inherited by petitioners. In other words, the taxable income of the partnership should be limited to the income derived from the acquisition and sale of real properties and corporate securities and should not include the income derived from the inherited properties. It is admitted that the inherited properties and the income derived therefrom were used in the business of buying and selling other real properties and corporate securities. Accordingly, the partnership income must include not only the income derived from the purchase and sale of other properties but also the income of the inherited properties."

Besides, as already observed earlier, the income derived from inherited properties may be considered as individual income of the respective heirs only so long as the inheritance or estate is not distributed or, at least, partitioned, but the moment their respective known shares are used as part of the common assets of the heirs to be used in making profits, it is but proper that the income of such shares should be considered as the part of the taxable income of an unregistered partnership. This, We hold, is the clear intent of the law.

Likewise, the third question of petitioners appears to have been adequately resolved by the Tax Court in the aforementioned resolution denying petitioners' motion for reconsideration of the decision of said court. Pertinently, the court ruled this wise:

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> "In support of the third ground, counsel for petitioners allege:
>
> 'Even if we were to yield to the decision of this Honorable Court that the herein petitioners have formed an unregistered partnership and, therefore, have to be taxed as such, it might be recalled that the petitioners in their individual income tax returns reported their shares of the profits of the unregistered partnership. We think it only fair and equitable that the various amounts paid by the individual petitioners as income tax on their respective shares of the unregistered partnership should be deducted from the deficiency income tax found by this Honorable Court against the unregistered partnership.' (page 7, Memorandum for the Petitioner in Support of Their Motion for Reconsideration, Oct. 28, 1961.)

In other words, it is the position of petitioners that the taxable income of the partnership must be reduced by the amounts of income tax paid by each petitioner on his share of partnership profits. This is not correct; rather, it should be the other way around. The partnership profits distributable to the partners (petitioners herein) should be reduced by the amounts of income tax assessed against the partnership. Consequently, each of the petitioners in his individual capacity overpaid his income tax for the years in question, but the income tax due from the partnership has been correctly assessed. Since the individual income tax liabilities of petitioners are not in issue in this proceeding, it is not proper for the Court to pass upon the same."

Petitioners insist that it was error for the Tax Court to so rule that whatever excess they might have paid as individual income tax cannot be credited as part payment of the taxes herein in question. It is argued that to sanction the view of the Tax Court is to oblige petitioners to pay double income tax on the same income, and, worse, considering the time that has lapsed since they paid their individual income taxes, they may already be barred by prescription from recovering their overpayments in a separate action. We do not agree. As We see it, the case of petitioners as regards the point under discussion is simply that of a taxpayer who has paid the wrong tax, assuming that the failure to pay the corporate taxes in question was not deliberate. Of course, such taxpayer has the right to be reimbursed what he has erroneously paid, but the law is very clear that the claim and action for such reimbursement are subject to the bar of prescription. And since the period for the recovery of excess income taxes in the case of herein petitioners has already lapsed, would not seem right to virtually disregard prescription merely upon the ground that the reason for the delay is precisely because the taxpayers failed to make the proper return and payment of the corporate taxes legally due from them. In principle, it is but proper not to allow any relaxation of the tax laws in favor of persons who are not exactly above suspicion in their conduct vis-a-vis their tax obligation to the State.

IN VIEW OF ALL THE FOREGOING, the judgment of the Court of Tax Appeals appealed from is affirmed, with costs against petitioners.

Makalintal, Zaldivar, Fernando, Makasiar, and Antonio, JJ., concur.

Reyes, J.B.L., Acting C.J., and Teehankee, J., concur in the result.

Concepcion, C.J., on official leave.

Castro, J., took no part.

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[1] In other words, the assessment was affirmed except for the sum of P100.00 which was the total of two P50-items purportedly for "Compromise for non-filing" which the Tax Court held to be unjustified, since there was no compromise agreement to speak of.

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