

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. ANTONIO PRIETO ET AL., RESPONDENTS.

G.R. No. L-11976. September 26, 1961

Ponente: DIZON, J.

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DIZON, J.:

Before us is petitioner's action praying that our decision of August 29, 1961 be reconsidered and set aside "insofar as said decision affirms the ruling of the Court of Tax Appeals charging interest against the Government on the tax payment declared refundable to the respondents". He relies upon our decision in *Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo*, promulgated on May 25, 1959, in which we said:

"We agree, however, with the Solicitor General that the Court of Tax Appeals erred in ordering the payment of interest on the amount to be refunded to respondent herein. In the absence of a statutory provision clearly or expressly directing or authorizing such payment, and none has been cited by respondent, the National Government cannot be required to pay interest (*H. E. Heacock Co. v. Collector of Customs*, 37 Phil., 970; *Marino Trading Co. v. Gov't. of the P. I.*, 39 Phil., 29, *Sarasola v. Trinidad*, 40 Phil., 252). So much of the decision appealed from as requires the payment of interest should, therefore, be eliminated."

Prior, however, to the decision relied upon we held in *Carcar Electric & Ice Plant Co., Inc. vs. Collector of Internal Revenue* (G. R. No. L-9257, Oct. 17, 1956, 53 O. G. No. 4, 1068) that "under the present Internal Revenue Code the Collector of Internal Revenue may be made to answer for interest at the legal rate on taxes improperly collected. Such liability serves as additional safeguard in favor of the taxpayer against arbitrariness in the exaction or collection of taxes and imposts." (See Resolution on the Motion for Reconsideration filed by the Collector of Internal Revenue, 53 O. G. No. 4, 1071-1075).

In reasoning our Resolution in the *Carcar* case we said that "Under the Internal Revenue Act of 1941, the Collector of Internal Revenue was liable for interest on taxes improperly collected as held in *Hongkong Shanghai Bank vs. Rafferty*, 39 Phil. 153; *Heacock Co. vs. Collector of Customs*, 37 Phil. 970; *Vda. Hijos de P. Roxas vs. Rafferty*, 37 Phil. 957"; that, subsequently, Section 1579 of the Administrative Code of 1917 expressly authorized suits against the Collector of Internal Revenue "for the recovery without interest of the sum alleged to have been illegally collected"; that for this reason, thereafter no judgments for interest were rendered against the Collector; that in 1939, the National Internal Revenue Code, in its section 306, authorized recovery of taxes erroneously or illegally collected, but omitting the expression "without interest" employed in the aforesaid section of the Administrative Code of 1917, which it superseded; that considering our repeated rulings holding the Collector of Internal Revenue liable for interest on taxes improperly collected, in the absence of express exemption, it was clear that the Legislatures failure to reenact the words "without interest" of the Administrative Code of 1917 showed a clear desire to return to the rule in force before said year.

Our decision in the *Carcar* case, however, must be understood as holding the Collector of Internal Revenue liable of interest on taxes improperly collected only if the collection was attended with "arbitrariness". The facts involved in the case relied upon by petitioner—the *St. Paul's Hospital of Iloilo* case—do not seem to justify the

conclusion that arbitrariness attended or characterized the collection of the taxes in question therein. Said facts are as follows:

"Petitioner is a corporation 'dedicated to charitable, educational and religious purposes', operating a hospital giving medical assistance to destitute persons. (See *St. Paul's Hospital of Iloilo v. Collector of Internal Revenue*, C. T. A. Case No. 6, promulgated on December 4, 1954). It maintains a pharmacy department within the premises of its hospital to supply drugs and medicines only to charity and paying patients confined therein. However, only the paying patients are required to pay the medicines supplied to them and the charge consists of the cost of such medicines plus an additional 10% thereof to partly offset the cost of medicines supplied free of charge to charity patients. On May 3, 1954, respondent assessed and demanded from petitioner the sum of P485.00 allegedly representing business tax on its operation of a pharmacy department. From this assessment petitioner appealed to this Court.

The question of whether or no the sale of drugs and medicines made at the pharmacy department of the St. Paul's Hospital of Iloilo were taxable was, in our opinion, a fairly debatable issue. The Collector, therefore, can not be said to have acted arbitrarily in assessing the corresponding tax on the hospital. This being the case, we see no real conflict between our decision in the *Carcar* case, on the one hand, and the one rendered in the *St. Paul's Hospital of Iloilo* case.

The question we now have to decide is whether the first or the second ruling is the one applicable to the present case. Upon consideration of the facts appearing of record we believe that it is the first. The Collector of Internal Revenue had no reason to insist in collecting the inheritance tax from respondents on the basis of the value of the properties allotted to each of them, in accordance with the project of partition submitted to and approved by the court, without deducting therefrom the cash payments which, in accordance with their agreement with their coheirs, they had to pay to the latter for the purpose of making the share of each heir equal in value to that of the others—as ordained in the will of the deceased Doña Teresa Tuason y de la Paz, and as agreed among the heirs. What each of the respondents really received as his share in the estate of said deceased was the value of the properties allotted to each of them minus the cash payment each had to make in order to equalize their respective share with that of the other heirs. The collection of the inheritance taxes herein involved being clearly unjustified, we are constrained, as already stated above, to hold the ruling in the *Carcar* case applicable to the present.

WHEREFORE, petitioner's motion for reconsideration is hereby denied.

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

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