

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. JUAN ISASI, M. SALUSTIANA ALDECOA, CLAUDIO ZULOAGA, MIREN ZULOAGA, HUGO P. RODRIGUEZ, AND THE COURT OF TAX APPEALS, RESPONDENTS.

G. R. No. L-9186. April 29, 1957

Ponente: FELIX, J.

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FELIX, J.:

Juan Isasi, M. Salustiana Aldecoa assisted by her husband Jesus Isasi, Claudio Zuloaga, Jr., Miren Zuloaga and Hugo P. Rodriguez in his capacity as Liquidator of the Partnership Aldecoa, Zuloaga and Isasi, instituted originally this case against the Collector of Internal Revenue of the Republic of the Philippines in the Court of First Instance of Negros Occidental (Civil Case No. 2028), but by virtue of the enactment Of Republic Act No. 1125, creating the Court of Tax Appeals, same was remanded to the latter Court in accordance with section 22 of said Act.

From the agreed stipulation of facts and other pleadings filed by the parties, it appears that plaintiffs Juan Isasi, M. Salustiana Aldecoa, Claudio Zuloaga, Jr., and Miren Zuloaga formed a partnership known as "Aldecoa, Zuloaga é Isasi" organized principally for the exploitation, development and utilization of Haciendas Manucao and Conchita, located in the municipalities of Binalbagan and Hinigaran, Negros Occidental. The partnership agreement "Escritura de Constitution de la Sociedad Agricola Limitada Aldecoa, Zuloaga 6 Isasi" was duly registered on October 27, 1947.

The records show that for the tax years 1948 and 1949, the firm Aldecoa, Zuloaga e Isasi filed its income tax returns and the Collector of Internal Revenue assessed the sum of P26,873.66 against said partnership which the latter paid, and that the members of the partnership filed their individual income tax returns for the years 1948, 1949, 1950 and 1951, in which returns they indicated the shares of the profit or dividends that they allege to have received from the partnership. On June 30, 1951, the partners agreed to dissolve the partnership and the agreement of dissolution was duly recorded in the Securities and Exchange Commission on October 25, 1951, wherein plaintiff Hugo P. Rodriguez was appointed as liquidator.

Believing that the partnership "Aldecoa, Zuloaga e Isasi" was a duly registered general co-partnership (sociedad colectiva) and therefore not subject to income tax under Section 24 of the National Internal Revenue Code, plaintiffs filed with defendant on July 16, 1951, a claim for the refund of P26.873.66 which the partnership had paid as income tax. The claim for refund not having been acted upon by defendant, a complaint was filed with the Court of First Instance of Negros Occidental on August 4, 1951, praying that defendant be ordered to return to plaintiffs the aforementioned sum with costs, and for such other remedies as may be just and equitable in the premises.

On September 14, 1951, the Provincial Fiscal of Negros Occidental answered the complaint admitting some of the averments thereof and at the same time denying plaintiffs' allegations that Aldecoa, Zuloaga é Isasi is a general or

regular collective partnership, the truth being that said partnership was a limited partnership and as such cannot be exempt from income tax. The Fiscal further set up the affirmative defense that it being a civil partnership, whether registered or not, Aldecoa, Zuloaga e Isasi could be taxed as a corporation under Section 24 of the National Internal Revenue Code. He therefore prayed that the complaint be dismissed with costs against plaintiffs.

After the parties had filed their respective memoranda, the Court of Tax Appeals which took cognizance of the case rendered a decision ordering defendant to refund the sum of P26,873.66, without costs, and making the following pronouncements:

"In view of the foregoing, we are, therefore, of the opinion, and so hold that the partnership 'Aldecoa, Zuloaga e Isasi' was a duly registered general co-partnership (compania colectiva) within the meaning and contemplation of sections 24 and 26 of the National Internal Revenue Code and as such it is not liable for income tax as a juridical person although the partners composing it are liable in their individual capacity. Since it is admitted that during the calendar years 1948, 1949, 1950 and 1951, the plaintiff partners Juan Isasi, M. Salustiana Aldecoa, Claudio Zuloaga and Miren Zuloaga of the said partnership, had filed their respective individual income tax returns, and in these returns, the said plaintiff partners indicated the amounts they had received as income from the partnership and paid the income tax assessed against them by the defendant Collector of Internal Revenue on account thereof, the total amount of P26,873.66 paid by the partnership 'Aldecoa, Zuloaga e Isasi' as income tax for the fiscal years from July 1, 1948, to June 30, 1950, is therefore refundable".

From this decision, defendant filed with this Court a petition to review the said decision making the following assignment of errors:

- That the respondent Court of Tax Appeals erred in holding that the term "duly registered general co-partnership (sociedad colectiva)" found in sections 24 and 26 of the National Internal Revenue Code includes civil partnerships which have adopted the form of companias colectivas and (were) duly registered;
- That the respondent Court of Tax Appeals erred in finding that the partnership "Aldecoa, Zuloaga e Isasi" has adopted the form of general partnership (sociedad colectiva) under the Code of Commerce; and
- That the respondent Court of Tax Appeals erred in holding that the partnership "Aldecoa, Zuloaga e Isasi" was a duly registered general co-partnership (sociedad colectiva) within the meaning and contemplation of the aforesaid sections of the Tax Code and was not therefore liable to pay income tax.

The dispute arose from a divergence of opinion as to the proper interpretation and application of sections 24 and 26 of the National Revenue Code, which reads as follows:

"Sec. 24. TAX ON CORPORATIONS.—There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized but not including duly registered general co-partnership (compamas colectivas), a tax upon such income equal to the sum of the following: * * *".

"Sec. 26. TAX LIABILITY OF MEMBERS OF DULY REGISTERED GENERAL CO-PARTNERSHIP.—Persons carrying on business in general co-partnership (compania colectiva) duly registered in the mercantile registry shall be liable for income tax only in their individual capacity, and the share of the profits of the registered general co-partnership (compania colectiva) to which any taxable partner would be entitled, whether divided or otherwise, shall be returned for taxation and the tax paid in accordance with the provisions of this Title."

It shall be noted in the case at bar that the cause of action accrued before the effectivity of the new Civil Code and, therefore, it is to be governed by the pertinent provisions of the old Civil Code (Art. 2253, new Civil Code)

and the Code of Commerce, although the provisions of the latter Code on partnership have been repealed by Article 2270, No. 2, of the new Civil Code.

Under the old codes, there was a distinction between civil and commercial partnership and since sections 24 and 26 of the Tax Code, under which respondent partners claim their right to be refunded, expressly exempts from corporation tax "duly registered general co-partnerships" (sociedades colectivas), respondent partners maintain that their defunct partnership (which by its purposes and scope seemed to partake of the nature of a civil partnership), was duly registered and had the form and style of a general co-partnership and is, therefore, entitled to the exemption. They also advanced the theory that a partnership, whether civil or commercial, would be entitled to the exemption as long as it is a general partnership, because the Tax Code makes no qualification to this effect.

The issues left for Us to determine in this appeal are: whether the term "duly registered general co-partnerships (sociedades colectivas)" used in sections 24 and 26 of the Tax Code includes both the commercial and civil ones, and whether the partnership Aldecoa, Zuloaga e Isasi falls within said classification and hence entitled to the benefit granted therein.

There is no dispute that the partnership agreement entered into by the respondent partners was styled "Escritura de Constitucion de la Sociedad Agricola Lirtiitada* Aldecoa, Zuloaga e Isasi", thereby giving the impression that said partnership is a limited one. On the other hand, said agreement specifies that the primary purpose for which the partnership was organized was the exploitation of the two haciendas "Manucao" and "Conchita", as stated in paragraph 3 thereof which declares that:

"3. Quo el objeto do la sociedad es la rehabilitacion de las haciendas citadas y de sus perteneucias, y la explotacitm agrieola de las Tnisrnas, en la forma qua crea oportuno el gerente de la misma, y para llevar a cabo dicho objeto y los fines generales de la sociedad, la misma podra:

and petitioner contends, that this clause clearly indicates that respondents' partnership was a civil partnership which justifies petitioner's stand in collecting the taxes in question. In passing upon this point, We must take into consideration the provision of the old Civil Code which states that:

"Art. 1670. Partnerships which on account of the purpose to which they are devoted are evil may adopt any of the forms recognized by the Code of Commerce. In such cases its provisions shall be applicable to them in so far they do not conflict with those of this Code",

and Chief Justice Arellano saw fit to apply this particular provision in his concurring opinion in the case of Com-paiiia Agricola de Ultramar vs. Reyes, 4 Phil., 2, by enunciating that:

"The civil partnership without ceasing to be civil by reason of its object may be created in ail forms recognized in the Code of Commerce. It may be a collective or general partnership, a partnership on comandita or an anonymous partnership. In this case if it will adopt the form of a general partnership then the provisions of Article 125 to 144 inclusive would be applicable to it. If it would adopt the form of a partnership on vo7nandita then Articles 145 to 150 would be applicable and if the form is that of an anonymous partnership then the provisions of Articles 157 to 174 of the Code of Commerce would be applicable in so far as they are in no conflict with the articles of the present code."

From the above-quoted opinion, a civil partnership adopting a form recognized by the Code of Commerce (soriiedad colectiva) does not necessarily cease to be a civil partnership. Members of a partnership organized for civil purposes may form themselves into a general or collective partnership (sociedad colectiva) which is sanctioned by Sections 125 to 144 of the Code of Commerce and register as such in the registry in which case their obligations and liabilities will be governed by the provisions of said Code as long as they are not in conflict

with the Civil Code. This organization in mercantile form does not transform the civil partnership into a commercial one, but just the same it is a sociedad colectiva, and since Sections 24 and 26 of the Tax Code made no qualification of the phrase duly registered general co-partnership (Compania, colectiva)", there is no reason why a civil partnership organized in accordance with the provisions of the Code of Commerce and duly registered as such should not fall within the exemption provided for in said Sections of the Tax Code.

In view of this CONCLUSION, we now have to find out whether the partnership Aldecoa, Zuloaga e Isasi has 'adopted the form of a general partnership (compania colectiva) or of a "Sociedad Agricola Limitada Aldecoa, Zuloaga e Isasi", as the partners thereof named their own association.

Article 122 of the Code of Commerce prescribes the following:

"Art. 122. As a general rule, commercial associations shall be established by the adoption of any of the following forms:

1. The regular general co-partnership in which all the partners, under a collective and commercial name, bind themselves to participate, in the proportion they may establish in the same rights and obligations.
2. The limited copartnership to which one or more persons contribute a specific amount of capital to a common fund, to become liable, for the business transactions of the firm executed exclusively by others under a collective name
3. (The provisions of this paragraph have been repealed by the Corporation Law)."

Even a casual scrutiny of the partnership agreement executed by the respondent partners would reveal that they followed the pattern set for the regular general copartnership (Arts. 122, No. 2, 125, 126, 131, 183 and 136 of the Code of Commerce). They have a firm name— Aldecoa, Zuloaga e Isasi; that firm name was composed of all the surnames of the partners—to which the words "and company" (to indicate the limited, partnership—Art. 146 of the Code of Commerce) is not added; the management of the firm was entrusted to a partner, Don Juan Isasi; the contribution of all the partners was expressly provided therein—there being no person contributing a specific amount of capital to a common fund to become liable for the business transactions of the firm executed exclusively by others under a collective name, as is the case in limited partnerships (Art. 122, No. 2, Code of Commerce) ; the duration of the partnership was made to last until June 30, 1952; and it allowed its manager, Don Juan Isasi to engage in the same kind of undertaking. It is unmistakable, notwithstanding the title of the partnership agreement (Escritura de Constitution de la Sociedad Agricola Limitada Aldecoa, Zuloaga e Isasi), that the partners intended to organize a general partnership under the Code of Commerce. For this reason, We agree with the Court of Tax Appeals when it states:

"To establish a limited partnership there must be at least one general partner and the name of at least one of the general partners must appear in the firm name. (Articles 122(2), 146, 148, Code of Commerce). If these requisites are not complied with, the partnership will be considered a general partnership, notwithstanding the fact that the articles of association are entitled 'limited partnership' (Jo Chung Gang* vs. Pacific Commercial Co., 45 Phil. 142). An examination of the firm name of the partnership 'Aldecoa, Zuloaga e Isasi' will readily show that neither of these requirements have been fulfilled; instead it operated under the name of all its members. The general partnership must operate under the name of all its members or some of them, or of only one, (without) necessarily adding to the name or names stated in the latter two cases, the words 'and company' (par. 1, Article 126, Code of Commerce). A limited partnership that has not complied with the law of its creation is not considered a limited partnership at all, but a general partnership in which all the members are liable (Hechen, Elements of Partnership, p. 412; Gilmore, Partnership, p. 499; 20 R.C.L. 1064). Moreover, a limited partner in a limited partnership cannot perform any act in the management of the partnership interests and cannot even examine the condition and state of partnership administration except at stated times, (Articles

122(2), 148 and 150, Code of Commerce), unlike the partnership Aldecoa, Zuloaga e Isfisi, wherein all the partners exercised powers of management and administration".

We, therefore, declare that the partnership "Aldecoa, Zuloaga é Isasi" was a duly registered general co-partnership (sodidad colectiva) within the meaning and contemplation of sections 24 and 26 of the National Internal Revenue Code.

Wherefore, the decision appealed from is hereby affirmed, without pronouncement as to costs. It is so ordered.

Montemayor, Bautista Angelo, Labrador, Conception, and Endencia, JJ.,
concur.

Reyes, J. B. L., J., concurring:

I concur in the opinion of Justice Alfonso Felix, but would like to stress the following points:

- The essence of a limited partnership is precisely the presence of one or more limited partners, who by the articles of co-partnership are not liable to firm creditors beyond their capital contribution; who are not authorized to take part in the firm management nor to have their names included in the firm name. None of these restrictions are imposed upon any of the members of "Aldecoa, Zuloaga e Isasi." How could this association then be a limited partnership when it had no limited partner?
- In laying emphasis on the terms "sociedad agrleola limitada" used in the partnership articles, the Solicitor General overlooks that in the Spanish legal terminology, the word "limitada" has no significance whatever. The partnership, sociedad or compania, had to be either colectiva or comanditaria (en comandita) or "anonima. Legally, there is no such entity as a sociedad Hmitada under the Code of Commerce. The English law speaks of limited copartnerships; but the correlative Spanish term is sociedad en comandita or sociedad comanditaria, not "sociedad limitada".
- If the firm "Aldecoa, Zuloaga e Isasi" was not a "sociedad en comandita," it had necessarily to be a "sociedad colectiva". It could not he a sociedad anona, because these could not be organized after 1906, when the corporation law was enacted (Benguet Consolidated vs. Pineda, 52 Off. Gaz. (No. 4) 1961).
- The Internal Revenue Code, sec. 26, exempts from the corporation tax those "persons carrying on business in general .copartnership"; and the construction of the phrase indicates that the word "business" is here used in the sense of transactions, not precisely acts of commercial character. The law is more concerned with the manner in which the business is carried out, rather than the nature of such business; hence it can not be said that the exemption excludes civil partnerships.
- If the reason for exempting general copartnerships from the tax is "to encourage the registration of partnerships so that the government and the public may have notice of the organizational facts and of the names of the individual partners" (Tan Senguan & Co. vs. Collector of Internal Revenue, 55 Phil. 439), that purpose is attained upon recording of the articles, regardless of the civil mercantile purpose of the partnership, and whether the partners are solidarily liable to creditors or not. The creditors are duly notified and can take the necessary measures to safeguard their interests.

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