

VERONICA SANCHEZ, PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.*G.R. No. L-7521. October 18, 1955*

Ponente: REYES, J.B.L., J.

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Appellant Veronica Sanchez is the owner of a two-story, four-door "accessoria" building at 181 Libertad Street, Pasay City, which she constructed in 1947. The building has an assessed value of P21,540 and the land is assessed at P7,980, or a total value of P29,540 (Exhibit 2). While appellant lives in one of the apartments, she is renting the rest to other persons. In 1949, she derived an income therefrom of P7,540 (Exhibit 1). Appellant also runs a small dry goods store in the Pasay market, from which she derives an annual income of about P1,300 (also Exhibit 1).

In the early part of 1951, the Collector of Internal Revenue made demand upon appellant for the payment of P163.51 as income tax for the year 1950, and P637 as real estate dealer's tax for the years 1946 to 1950, plus the sum of P50. as compromise (Exhibit 4). Appellant paid the taxes demanded under protest, and on October 16, 1951 filed action in the Court of First Instance of Manila (C. C. No. 14957) against the Collector of Internal Revenue for the refund of the taxes paid, claiming that she is not a real estate dealer. The lower Court, after trial, found appellant to be such a dealer, as defined by section 194(s) of the National Internal Revenue Code, as amended by Republic Act Nos. 42 and 588, and declared the collection of the taxes in question legal and in accordance with said provision. Wherefore, Veronica Sanchez appealed to this Court.

At the outset, it should be noted that while appellant claims the refund of the amount of P825 allegedly paid by her to the Collector of Internal Revenue as real estate dealer's tax, it appears that the sum of P163.31 thereof corresponds to her income tax for the year 1949 (Exhibit 4), so that the amount of tax actually involved herein is only P687, paid by appellant as real estate dealer's tax for the years 1946 to 1950. We notice also that the lower Court, in deciding this case, applied the definition of "real estate dealer" in section 194 (s) of the National Internal Revenue Code, as amended by Republic Acts Nos. 42 and 588. Republic Act No. 588 took effect only on September 22, 1950, while the tax in question was paid by appellant¹ for the years 1946 to 1950. Hence, the law applicable to this case is section 194(s) of the Tax Code before it was amended by Republic Act No. 588, which defines real estate dealers as follows:

" 'Real estate dealers' includes all persons who for their own account are engaged in the sale of lands, buildings or interests therein or in leasing real estate." (R. A. No. 42)

Does appellant fall within the above definition ? We are of the opinion that she does. The kind and nature of the building constructed by her—which is a four-door "accessoria"—shows that it was from the beginning intended for lease as a source of income or profit to the owner; and while appellant resides in one of the apartments, it appears that she always rented the other apartments to other persons from the time the building was constructed up to the time of the filing of this case.

The case of *Argellies vs. Meer*[*] G. R. No. L-3730, promulgated on April 25, 1952, cited by appellant in support

of her appeal, is not in point. In that case, Argellies had always resided outside the Philippines, and his properties in Manila were administered and managed by a local real estate company. We held that Argellies could not be considered as engaged in business of letting real estate, because he did not appear to have reinvested the rents received by him from this country, nor to have taken part in the management of his local holdings. In the case at bar, however, it was appellant who had the apartment in question constructed, purposely for lease or profit, and she manages the property herself. While she runs a small store in Pasay market, it is unlikely, and the evidence does not show, that she devotes all her personal time and labor to such store, considering its size and the fact that she derives little income therefrom. On the other hand, the work of attending to her leased property and her tenants would not take much of her time and attention, especially since she lives in the premises herself. And the leasing of her apartment appears to be her principal means of livelihood, for the income she derives therefrom amounts to more than five times that which she makes from her store.

Considering, therefore, that appellant constructed her four-door "accessoria" purposely for rent or profit; that she has been continuously leasing the same to third persons since its construction in 1947; that she manages her property herself; and that said leased holding appears to be her main source of livelihood, we conclude that appellant is engaged in the leasing of real estate, and is a real estate dealer as defined by section 194 (s) of the Internal Revenue Code, as amended by Republic Act No. 42.

Appellant argues that she is already paying real estate taxes on her property, as well as income tax on the income derive therefrom, so that to further subject its rentals to the "real estate dealers' tax" amounts to double taxation. This argument has already been rejected by this Court in the case of *People vs. Mendaros, et al.*, L-6975, promulgated May 27, 1955, wherein we held that "it is a well settled rule that license tax may be levied upon a business or occupation although the land or property used therein is subject to property tax", and that "the state may collect an ad valorem tax on property used in a calling, and at the same time impose a license tax on the pursuit of that calling", the imposition of the latter kind of tax being in no sense a double tax.

The evidence shows, however, that the apartment house in question was constructed only in 1947, while the real estate dealer's tax demanded of and paid by appellant was for the years 1946 to 1950 (see Exhibit 4). Wherefore, appellant is entitled to a refund of the tax paid for the year 1946, amounting to P37.50.

With the modification that the appellee Collector of Internal Revenue is ordered to refund to appellant Veronica Sanchez the amount of P37,50 paid as real estate dealer's tax for the year 1946, the decision appealed from is, in all other respects, affirmed. Costs against appellant. So ordered.

Bengzon, Acting C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, and Concepcion, JJ., concur.

[*] 91 Phil., 147.

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