

PURAKAN PLANTATION COMPANY, PETITIONER, VS. MELECIO R. DOMINGO, RESPONDENT.

G.R. No. L-18571. October 29, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for review of the decision of the Court of Tax Appeals in C.T.A. Case No. 693, "Purakan Plantation Company versus Melecio R. Domingo, as Commissioner of internal Revenue".

The petitioner, a Philippine corporation, cultivated a cassava plantation of approximately 435 hectares in Malabang, Lanao del Sur. Out of its cassava products, the petitioner manufactured cassava starch or flour.

On December 4, 1957, the Acting Regional Director of the Bureau of Internal Revenue for Regional District No. 9, wrote the petitioner a letter to inform it that "the records of this Office show that there is due and collectible from you the sum of P24,192.52 as sales tax for the year 1950 to October 15, 1953, inclusive, plus surcharge and penalties, and that the said amount has not been paid up to the present". The letter also advised the petitioner that unless the aforesaid amount was paid within five (5) days from receipt, Judicial action for the collection of the same would be filed.

The said tax assessment was reduced from P24,192.52 to P22,393.52, computed as follows:

1950 P 6,586.75

1951 41,268.03

1952 88,693.06

1953 (Jan. 1 - Oct. 15) 118,909.53

TOTAL P 255,457.36[*]

(See Exh. 7, page 30, BIR records.)

The petitioner presented for a reconsideration of the above assessment. On August 4, 1959, however, the respondent Commissioner, Melecio R. Domingo, denied the plea, explaining that-

"It appears that you were and are still manufacturing into flour and starch not only the cassava tubers produced in your plantation, but also cassava tubers bought from owners of other plantations. It is clear, therefore, that the manufacture of starch and floor, and not the production of cassava tubers is your primary business. Your production of cassava tubers in such case is merely incidental to your business as flour and starch manufacturer. This Office is, therefore, of the view that the doctrine enunciated in the case entitled 'Philippine Packing Corporation vs. Collector of Internal Revenue, G.R. No. L-9040', cannot in any respect be applied to your case."

From the aforementioned adverse ruling on its motion for reconsideration, the petitioner went to the Court of Tax Appeals on a petition for review. After due trial and hearing, the latter court sustained the assessment complained of, on the finding that "the petitioner bought cassava tubers from other plantations", and therefore, could not "claim exemption under Section 188 (b) of the Revenue Code".

All the parties hereto - the petitioner, the Commissioner of Internal Revenue, and the Court of Tax Appeals - agree that if the petitioner had manufactured its products during the tax periods involved in this suit only from and out of cassava tubers gathered from its own plantation, then indeed, it will enjoy the exemption under Section 188 (b) of the Revenue Code.

The pertinent portion of the decision of the Court of Tax Appeals is as follows:

"Petitioner sought to prove that it never bought cassava tubers from other planters through the testimony of its manager. No record of its transaction was introduced in evidence. On the part of the respondent, the Internal Revenue agent testified that he interviewed neighboring planters of petitioners who informed him that they sold cassava tubers to petitioner. Affidavits of some of these planters were presented. Petitioner claims that these affidavits are not admissible in evidence for being hearsay. While we agree that these affidavits cannot be given much weight, the preponderance of the evidence leans heavily against petitioner. Under the law, all corporations, companies, partnerships, or persons required by law to pay internal revenue taxes are required to keep books and records "wherein all transactions and results of operations are shown and from which all taxes due the Government may readily and accurately be ascertained and determined any time of the year". (Sec. 334, Revenue Code.) It is to be assumed that petitioner is keeping such records. This is borne out by the fact that petitioner's manager was able to issue a certificate stating the correct gross sales of petitioner each year up to October 15, 1953 to the last centavo. (See Exh. 7, supra.) If it is true that petitioner never bought cassava tubers from other planters, what better evidence could have been presented other than its records? But it saw fit to withhold such evidence, the implication being that, if presented, it would be adverse. Accordingly, the finding of respondent that petitioner bought cassava tubers which it manufactured into flour must have to be sustained." (Italics supplied.)

Aside from the above consideration that the petitioner did not present the records of the company to dispute the conclusion of the Bureau of Internal Revenue and sustained by the Court of Tax Appeals, was the fact that the person invoking the exemption, as in this case, must justify his claim by a clear and positive grant of such privilege.

We are not ruling on whether or not petitioner is bound to pay sales tax on the sale of flour manufactured out of cassava produced in its own plantation had he definitely shown to the satisfaction of the Court the amount of such sale apart from the sale of flour milled from cassava purchased by it from other farmers, because it consistently maintained that no cassava tubers was purchased from others.

The issue hinges on the determination of whether or not the finding of the respondent Court that the petitioner bought some of its materials from its neighbor plantations is borne out by the evidence on record.

The only evidence submitted by the petitioner was the deposition given by Mr. Landis Doner, Secretary-Treasurer of the Company, denying that the company was buying cassava tubers from other neighboring plantations.

On the other hand, at the trial conducted in Manila on July 5, 1960, the following evidence for the Government appears in the transcript of the stenographic notes:

ARTEMIO C. JACALAN, 50 years of age, married, Provincial Revenue Officer of Lanao del Sur, residing at Iligan City, testified in the following manner:

Direct Examination by Atty. Tarrobago

Q

Mr. Jacalan, I understand you are employed in the Bureau of Internal Revenue. What position or positions, if any, have you held in the said Bureau?

A

First, when I entered the Bureau in 1938, I was assigned as Assistant Agent, then Examiner, and now a provincial revenue officer.

Q

What is your present position?

A

Provincial Revenue Officer of Lanao del Norte.

Q

Mr Jacalan, do you know the Purakan Plantation Company?

A

Yes

Q

Why do you know it?

A

Because way back in 1954, I investigated that company.

Q

Why did you investigate said company?

A

By the order of the Provincial Revenue Officer at that time, I investigated that company.

Q

How did you investigate said company?

A

First, I called up the Manager of that plantation company to produce their books of accounts; then because the Manager of that plantation company could not give me complete records of their products in their manufacture of cassava starch, I went further to investigate the tax liability of the plantation company.

Q

What other sources of information, if any, did you use in arriving at the tax liability of Purakan Plantation Company?

A

By going to the neighboring plantations and asked them how they disposed of their cassava tubers.

Q

You said you went to the neighboring plantations, can you tell us the names of those neighboring plantations?

A

The Malabang Plantation, Balabagan Plantation, and the Sultan of Barorao.

Q

Who were the persons you interviewed?

A

The Manager of Malabang Plantation, the Manager of Balabagan Plantation, and the Sultan of Barorao and others.

Q

What information were you able to gather?

A

They told me that they were selling their cassava tubers to Purakan Plantation Company.

Q

Why were they selling their cassava tubers to Purakan Plantation Company?

A

Because at that time when I investigated the plantation company, the Purakan Plantation Company was the only one which had its cassava mill.

Q

Since the Purakan Plantation Company had cassava mill in that locality at that time, how did the other plantations dispose of their cassava tubers?

ATTY. CALDERON

We pray that the testimony of this witness regarding the cassava belonging to the neighboring plantations be stricken from the records on the ground that it is purely hearsay evidence. The best evidence will be the records of the various plantations. Moreover, I think the witness is incompetent.

JUDGE UMALI

He was the agent of the BIR charged with the investigation; that was precisely the result of his investigation. So his testimony is very material. The motion to strike, denied.

ATTY. TARBOBAGO

(Repeating the question)

Q

How did they dispose of their cassava tubers?

A

They sold them to Purakan Plantation Company.

The plaintiff also contended that the affidavits of Sultan Barorao and Liceria Abaden de Panganiban which contained statements to the effect that they sold cassava tubers to the plaintiff should not have been admitted, and the testimony of Internal Revenue agent Artemio Jacalan, was a mere hearsay. This is untenable. The court admitted these affidavits as a part of the testimony of the Internal Revenue agent Jacalan who investigated the matter.

It should be observed that Republic Act No. 1125, creating the Court of Tax Appeals expressly provides that the Court shall not be governed strictly by technical rules of evidence (Sec. 8). Therefore, if the said Court believes that the affidavits in question should be admitted, a part of the testimony of the Internal Revenue agent, then it is substantially in conformity with the provisions of Section 8 of Republic Act No. 1125.

In view of the foregoing, the decision of the Court of Tax Appeal is hereby affirmed. With costs against petitioner.

Bengzon, C. J., Bautista Angelo, Concepcion, Regala, J. B. L., Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[*] Gross Sales

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