

MILTON GREENFIELD, PLAINTIFF AND APPELLANT, VS. BIBIANO L. MEER, DEFENDANT AND APPELLEE.

CA-G.R. No. 156. September 27, 1946

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from the decision of the Court of First Instance of Manila which dismisses the complaint of the plaintiff and appellant containing two causes of action; one to recover the sum of P9,008.14 paid as income tax for the year 1939 by plaintiff to defendant under protest, by reason of defendant having disallowed a deduction of P67,307.80 alleged by plaintiff to be losses in his trade or business; and the other to reclaim, in the event the first cause of action is dismissed, the sum of P475 collected by defendant from plaintiff illegally according to the latter, because the former has erroneously computed the tax on personal and additional exemptions.

The following are the pertinent facts stipulated and submitted by the parties to the lower court:

"2. That since the year 1933 up to the present time, the plaintiff has been continuously engaged in the embroidery business located at 385 Cristobal, City of Manila and oarried on under his name;

"3. That in 1935 the plaintiff began engaging in buying and selling mining stocks and securities for his own exclusive account and not for the account of others * * *;

"4. That Exhibit A attached to the complaint and made a part hereof represents plaintiff's purchases and sales of each class of stock and security as well as the profits and losses resulting on each class during the year 1939;

"5. That the plaintiff has not been a dealer in securities as defined in setion 84 (t) of Commonwealth Act No 466; that he has no established place of business for the purchase and sale of mining stocks and securities; and that he was never a member of any stock exchange;

"6. That the plaintiff filed an income tax return for the calendar year 1939 showing that he made a net profit amounting to P52,449.29 on embroidery business and P17,850.00 on dividends from various corporations; and that from the purchase and sales of mining stocks and securities he made a profit of P10,741.30 and incurred losses in the amount of P78,049.10, thereby sustaining a net loss of P67,307.80, which income tax return is hereto attached and marked Exhibit B;

"7. That in said income tax return for 1939, the plaintiff declared the results of his stook transactions under schedule B (Income from Business); but the defendant ruled that they should be declared in the income tax return, Exhibit B, under Schedule D (Gains and Losses from Sales or Exchanges of Capital Assets, real or personal);

"8. That in said income tax return, said plaintiff claims his deduction of P67,307.80 representing the net loss sustained by him in mining stocks and securities during the year 1939; and that the defendant disallowed said item of deduction on the ground that said losses were sustained by the plaintiff from the sale of mining stocks and securities which are capital assets, and that the loss arising from the sale of the same should be allowed only to the extent of the gains from such sales, whioh gains were already taken into consideration in the

computation of the alleged net loss of P67,307.80;

"9. That the defendant assessed plaintiff's income tax return for the year 1939 at P13,771.06 as shown in the following computation appearing in the audit sheet of the defendant hereto attached and marked Exhibit C;

"Net income as per return of plaintiff for 1939

P70,299.29

"Add: Net Loss on sale of mining stocks and securities disallowed
in audit

67,307.80

"Total net income as per office audit

P137,607.09

"Amount of tax on net income as per office audit

P13,821.06

"Less: Tax on exemptions:

"Personal exemption

P2,500.00

"Additional exemption

1,000.00

"Total

P3,500.00

"TAX on exemptions

50.00

"Net amount of tax due

P13,771.06

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"10. That the defendant computed the graduated rate of income tax on the entire net income as per office audit, without first deducting therefrom the amount of personal and additional exemptions to which the plaintiff is entitled, allowing said plaintiff a deduction from the assessed tax the amount of P50 corresponding to the exemption of P3,500;

"11. That the plaintiff, objecting and excepting to all the rulings of the defendant above mentioned and in assessing plaintiff with P13,771.06, claimed from the defendant the refund of P9,008.14 or in the alternative case P475.00, which claim of plaintiff was overruled by the defendant;"

The questions raised by appellant in his four (4) assignments of errors may be reduced into the following: (1) Whether the losses sustained by the plaintiff from the buying and selling of mining securities during the year 1939 are losses incurred in trade and business, deductible under Sec. 30 (d) (1)(A) of Commonwealth Act No. 466 from his gains in his embroidery business and other income; or whether they are capital losses from sales of capital assets which shall be allowed only to the extent of the gains from such sales under Sec. 34 of the same Commonwealth Act No. 466. And (2) whether, under the present law, the personal and additional exemptions granted by Sec. 23 of the same Act, should be considered as a credit against or be deducted from the net income, or whether it is the tax on such exemptions that should be deducted from the tax on the total net income.

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As to the first question, it is agreed in the above-quoted stipulation of facts that the plaintiff was not a dealer in securities or shares of stock as defined in section 84 (t) of Commonwealth Act No. 466. The question for determination is whether appellant, though not a dealer in mining securities, may be considered as engaged in the business of buying and selling them under section 30 (d), (1)(A) of said Act No. 466.

It is evident that, taking into consideration the nature of mining securities, which may be bought or sold either as a business or for speculation purposes only, the National Assembly of the Philippines has deemed it necessary to define or determine beforehand in Sec. 84 (t) of Commonwealth Act No. 466 who may be considered as persons engaged in the trade or business of buying and selling securities within the meaning of the phrase "incurred in trade or business" used in Sec. 30 (d) (1)(A) of the same Act, in order to avoid any question or doubt as to deductibility of all losses incurred by a merchant in securities from his net income from whatever source. The definition of dealer or merchant in securities given in said section 84 (t) includes persons, natural or juridical, who are engaged in the purchase and sale of securities whether for their own account or for others, provided they have a place of business and are regularly engaged therein. There was formerly some doubt or question as to whether a person engaged in buying and selling securities for his own account might be considered as engaged in that trade or business, and several cases involving such question had been submitted to the United States Federal Courts for ruling, and to the Income Tax Units of the United States Bureau of Internal Revenue for opinion. But with the inclusive definition of the term "dealer" or merchant of securities given in section 84 (t) of Act No. 466, such doubt can no longer arise.

Said section 84 (t) reads as follows:

"(t) The term "dealer in securities" means a merchant of stocks or securities, whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom."

Appellant assumes, however, that the above-quoted definition does not cover or include all persons engaged in the trade or business of buying and selling securities within the meaning of said section 30 (d) (1)(A). He contends that, although he is not a dealer in mining securities, he may be considered as having been engaged in the trade or business of buying and selling securities. And in support of his contention appellant quotes Opinion No. 1818 of the Income Tax Unit of the United States Bureau of Internal Revenue (I. T. No. 1818, C. B. II, pp. 39-41), in which opinion the following was said:

"The taxpayer is not a member of any stock exchange, has no place of business, and does not make purchases and sales of securities for customers. Much of his trading is done on margin. He devotes the greater part of the time in his broker's office keeping in touch with the market. He has no other trade or business, his income consisting entirely of interest on bonds, dividends, on stocks, and profits from the sale or other disposition of securities.

"Advice is requested (1) whether this taxpayer is entitled to the benefit of section 204 of the Revenue Act of 1921, with reference to a net loss incurred in 1921, from the sale of stocks; (2) whether he is entitled to the benefit of section 206 of the Revenue Act of 1921, with regard to gains derived in 1922 from the sale of two blocks of stock held more than two years.

"1. Section 204 (a) provides in part:

"That as used in this section the term 'net loss' means only net losses resulting from the operation of any trade or business regularly carried on by the taxpayer * * *.'

"The question is, then, whether the taxpayer was regularly engaged in the trade or business of buying and selling securities.

"The interpretation placed upon the term 'business or trade' by the courts and by the Department may be indicated by a few illustrative decisions, in two early cases (In re Marson [1871], Fed. Cas. No. 9142, and In re Woodward [1376], Fed. Cas. No. 18001) it was held that a speculator in stocks was not a 'merchant or tradesman' within the meaning of the Bankruptcy Act of 1867. It was said in the former case:

"'The only business he was engaged in was what is called speculating in stocks, that is, buying and selling them, with a view to his own profit, to be made by the excess of the selling price over the buying price * * *. The fact that the bankrupt was engaged in no other business can not have the effect to make him a merchant or a tradesman, because he carried on the business he did carry on in the way in which he carried it on.'

"That is, although his business was buying and selling, since this business was simply with a view to his own profit and not for others, he was not a merchant or tradesman. Compare In re Surety Guarantee & Trust Co. ([1902], 121 Fed., 73) and In re H. R. Leighton & Co. ([1906], 147 Fed., 311).

"With this background, the Department, in Treasury Decisions 1989, 2005, 2090, and 2135 (not published in Bulletin service), held that the provision of paragraph B of the 1913 Act, allowing as a deduction for the purpose of the normal tax 'losses actually sustained during the year, incurred in trade * * *', did not include losses from isolated transactions; for instance, in stocks and bonds. In *Mente vs. Eisner* ([1920], 266 Fed., 161) (certiorari denied, 254 U. S., 635), these rulings were upheld in a case in which a manufacturer of bagging was denied deductions for losses in buying and selling cotton on the cotton exchange for his individual account, not connected with his manufacturing business. (Cf. *Black vs. Bolen* [1920], 268 Fed., 427.) Likewise, in *L. O. 601* (not published in Bulletin service), it was held that 'losses sustained by a person in buying and selling securities on his own account, he not being a licensed stock and bond broker buying and selling for others as well as for himself, are not deductible as losses in trade within the meaning of paragraph B of the Act of October 3, 1913.' The basis of these opinions is thus seen to be (1) that dealing in securities on one's own account is not technically a 'trade'; (2) that isolated transactions in securities, not connected with the tax payer's regular business, do not constitute a 'trade'.

"In the Act of September 8, 1916, the wording of the 1913 Act was slightly changed (section 5 [a] fourth) to permit a deduction of 'losses actually sustained during the year, incurred in his business or trade * * *.' Under this more liberal provision, it has been uniformly held that where a taxpayer devoted all his time, or the major portion of it, to buying and selling securities on his own account, this occupation was his 'business'; and therefore he was permitted to deduct losses sustained in such dealings as being 'incurred in his business.' *A.R.R. 404* (C.B. 4, p. 157); *semble L. O. 601*. These rulings are inferentially supported by the definitions of trade or business to comprehend 'all his activities for gain, profit, or livelihood, entered into with sufficient frequency, or occupying such portion of his time or attention as to constitute a vocation,' contained in article 8 of Regulations 41, relative to the war excess-profits tax (approved in *Woods vs. Lewellyn* [1921], 289 Fed. 498). * * *

"It is submitted that these decisions are a sound interpretation of the accepted definition of business: 'Business is a very comprehensive term and embraces everything about which a person can be employed.' Black's Law Dictionary, 158, citing *People vs. Commissioners of Taxes* (23 New York, 242, 244). 'That which occupies the time, attention and labor of men for the purpose of a livelihood or profit.' Bouvier's Law Dictionary, Vol. 1, p. 273. *Fling vs. Stone Tracy Co.* (1910), 220 U. S., 107 at 171, 31 Sup. Ct., 342, 55 Law ed., 389; Ann. Cas. 1912-B, 1312; cited with approval in *Von Baumbach vs. Sargent Land Company* (1916), 242 U. S., 503, at 515. If they are sound, the facts of the instant case require a ruling that the taxpayer was regularly engaged in the business of buying and selling securities on his own account and was, therefore, entitled to the benefit of the provisions of section 204 (a)." (I. T. No. 1818; C. B. II-2, pp. 39-41.)

But, assuming arguendo that the above-quoted opinion may be applied to the present case, it is evident that the appellant can not be considered as having been engaged in the business of buying and selling securities within the meaning of section 30 (d) (1)(A) of Act No. 466 According to said opinion, in order that he may be so considered, it is necessary that he must devote all his time or at least a major portion thereof to said business and that the latter must be regularly carried on by him.

In the stipulation of facts presented in this case it is agreed that "since the year 1933 up to the present time, the plaintiff has been continuously engaged in the embroidery business," and that "in 1935, the plaintiff began engaging in buying and selling mining stocks and securities for his own exclusive account." There is nothing therein to show that plaintiff-appellant has regularly devoted all his time or the major portion thereof to the business of buying and selling mining securities for his own account. On the contrary, it having been stipulated that he has been continuously engaged in the embroidery business during the same time, it necessarily follows that he has not and could not have devoted regularly all his time or a major portion thereof to the buying and selling of mining securities.

Furthermore, from Exhibit A attached to the complaint and made a part of said stipulation of facts, which represents plaintiff's purchases and sales of each class of stocks and securities as well as the profits and losses resulting therefrom during the year 1939, it appears that he made purchases and sales of securities only on several days of some months and nothing on others. As shown in said exhibit, during the month of January, 1939, appellant purchased shares of stock of different mining corporations on January 2, 3, 4, 6, 13, 19, 20, 25, 30, and sold some of them on January 4, 10, 13 and 31. During February he made purchases on the dates 1, 8, 13, 14, 25 and 27; and sales on 6, 9, 10, 16 and 17. During March, he purchased mining securities on 7, 8, 9, 10, 16, 22 and 30, and sold some on March 9 only. During April he made two purchases on April 3 and 5, and one sale on April 4. During May he purchased mining shares of stock on May 9, 10, 13, 19, 24 and 25; and sold some of them on May 9, 10, 12, 13 and 31. During June appellant made purchases on 1, 3, 5, 8, 13, 15 and 17, and sales on 22, 23, 24, and 28. During July, purchases on 1, 3, 6, 19; and sales on July 24, 25, 26 and 27. During August he purchased shares of stock on some mining corporations on 5, 7, 16, and 18 and sold shares of one mining corporation on August 10 only. During September appellant did not purchase or sell any securities. During October he sold securities only on the 12th of said month, and made no purchase at all. And during November and December he did not purchase or sell any.

Appellant contends that as from Exhibit A it appears that the mining securities were inventoried in order to arrive at his profits and losses, they cannot be considered as capital assets, because, according to section 34, the term capital assets does not include property which would properly be included in the inventory. But it is to be observed that the law refers not to property merely included, but to that which would be properly included in the inventory. Section 148 of the Income Tax Regulations No. 2 of February 10, 1940, (39 Off. Gaz. 325) provides that "the securities (to be) inventoried as here provided may include only those held for purposes of resale and not

for investment," and that "the taxpayers who buy and sell or hold securities for investment or speculation, * * * are not dealers in securities within the meaning of this rule." And the General Counsel of the Federal Bureau of Internal Revenue, after quoting Article 105 of U. S. Regulations 74 from which said Section 148 of our Income Tax Regulations was taken, said that a person not a dealer in securities is precluded from the use of inventories in computing his net income." (G. B. X-2, p. 128, G. C. M. 9656).

The lower court has not therefore erred in dismissing appellant's first cause of action, on the ground that the losses sustained by appellant from the buying and selling of mining securities are not losses incurred in business or trade but are capital losses from sales of capital assets, as contended by appellee.

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With regard to the second point, the lower court held that, as the new law does not provide that the personal exemptions shall be allowed in the nature of a deduction from the net income, as prescribed in the old law, and there is a distinction between exemption and deduction, the tax due on said exemptions must be deducted from the tax due on the whole net income, instead of deducting the total amount of the exemptions from the net income.

The argument of the appellee in support of the lower court's decision is that the omission in section 23 of Act No. 466 of the phrase "in the nature of a deduction" found in section 7 of the old law, shows that it was the intention of the National Assembly to adopt the innovation proposed by the Tax Commission which prepared the draft of the new law, an innovation based on what is known as the "Wisconsin Plan" now in operation in several American states. Under said plan, the cumulative amount of the tax is fixed on any given amount of net income without regard to the status of the taxpayer, and then this amount is reduced by the tax credit fixed in the law according to the status of the taxpayer and the number of his dependents as follows: for single individuals, there is allowed a tax credit of P10; for married persons or heads of family, P30; and for each dependent below 21 years of age, P10.

Section 7 of the old law provided; "For the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income * * *"; while section 23 of the new law provides: "For the purpose of the tax provided for in this Title there shall be allowed the following exemptions;" Now, the question to be determined or answered is: Does this change in the phraseology of the law show the intention of National Assembly to change the theory or policy of the old law so as to deduct now the tax on the personal and additional exemptions from the tax fixed on the amount of the net income, instead of deducting the amount of personal and additional exemptions from that of the net income, before determining the tax due on the latter?

It is a well-settled rule of statutory construction that where a statute has been enacted which is susceptible of several interpretations there is no better means for ascertaining the will and intention of the legislature than that which is afforded by the history of the statute. Taking into consideration the history of section 23 of the Commonwealth Act No. 466, the answer to the above-propounded question must obviously be in the negative. Section 22 of the bill entitled "An Act to revise, amend and codify the Internal Revenue Laws of the Philippines," prepared by the Tax Commission and submitted to the National Assembly of the Philippines, in substitution of section 7 of the old Income Tax Law, reads as follows:

"SEC. 22. Amount of tax credit allowable to individuals.—There shall be allowed as a credit in the nature of a deduction from the amount of the tax payable by each citizen or resident of the Philippines under section 20:

"(a) Tax credit of single individuals.—The sum of P10 if the person making the return is a single person or a married person legally separated from his or her spouse.

"(b) Tax Credit of a married person or head of Family.—The sum of P30 if the person making the return is a

married man with a wife not legally separated from him, or a married woman with a husband not legally separated from her, or the head of a family: Provided, That from the tax due on the aggregate income of both husband and wife when not legally separated only one tax credit of P30 shall be deducted. For the purpose of this section, the term "head of a family" includes an unmarried man or woman with one or both parents, or one or more brothers or sisters, or one or more legitimate, recognized natural or adopted children dependent upon him or her for their chief support where such brothers, sisters, or children are less than twenty-one years of age.

(c) Additional Tax Credit for Dependents.—The sum of P10 for each legitimate, recognized natural, or adopted child wholly dependent upon the taxpayer, if such dependents are under twenty-one years of age, or incapable of self-support because mentally or physically defective. The additional tax credit under this paragraph shall be allowed only if the person making the return is the head of a family."

But the National Assembly, instead of adopting or incorporating said proposed section 22 in the National Internal Revenue Act, Code, C. A. No. 466, copied substantially in section 23 of the latter the provision of section 7 of the old law relating to personal and additional exemptions, with the only modification that the amount of personal exemption of single individuals has been reduced from two thousand to one thousand pesos, and that of married persons or heads of family from four thousand to two thousand five hundred pesos.

If it were the intention of the National Assembly to adopt the "Wisconsin plan" proposed by the Tax Commission, it would have adopted literally, or at least substantially, the provisions of said section 22 as section 23 of Commonwealth Act No. 466, instead of substantially incorporating section 7 of the old Income Tax law as section 23 of the new, except the first paragraph thereof which read: "For the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income." This was changed in said section 23, which

provides: "For the purpose of the tax provided for in this Title, there shall be allowed the following exemptions:" From the fact that the National Assembly discarded completely section 28 of the bill drafted in accordance with the "Wisconsin Plan" and submitted by the Tax Commission, it is to be presumed that the National Assembly of the Philippines did not intend to introduce any substantial change in the old law in so far as the effect of personal and additional exemptions on the income tax is concerned.

The mere fact that the phrase "in the nature of a deduction" found in section 7 of the old law was omitted in section 23 of the new or National Internal Revenue Code did not and could not effect any change in the law. It is evident that said phrase was added or inserted in said 7 only out of extreme caution, because, even without it, the exemption would have to be deducted from the gross income in order to determine the net income subject to tax. Had the provision in the old law been drafted in exactly the same term as that of said section 23, the same construction should have been adopted. Because "Exemption is an immunity or privilege; it is freedom from a charge or burden to which others are subjected." (*Florar vs. Sherifan*, 137 Ind. 28; 36 N. E. 365, 369) If the amounts of personal and additional exemptions fixed in section 23 are exempt from taxation, they should not be included as part of the net income, which is taxable. There is nothing in said section 23 to justify the contention that the tax on personal exemptions (which are exempt from taxation) should first be fixed, and then deducted from the tax on the net income.

The change of phraseology alone does not lead to the conclusion that it was the intention of the lawmaker to amend or change the construction of the old law as contended by the appellee. For it is a well-established rule, recognized by the Supreme Court of Ohio in the case of *Conger vs. Barker's Adm'r*, (11 Ohio St. 1); "that in the revision of statutes, neither an alteration in phraseology nor the omission or addition of words in the latter statute, shall be held, necessarily, to alter the construction of the former act. And the court is only warranted in holding the construction of a statute, when revised, to be changed, where the intent of the legislature to make such change is clear, or the language used in the new act plainly requires such change of construction. It should be

remembered that condensation is a necessity in the work of compilation or codification. Very frequently words which do not materially affect the sense will be omitted from the statutes as incorporated in the code, or that same general idea will be expressed in briefer phrases. No design of altering the law itself could rightly be predicated upon such modifications of the language." (Italics ours) (See Black on the Construction and Interpretation of the Laws, Second Edition, pp. 594-595.)

Our Income Tax law is patterned after the United States Revenue or Income Tax laws. The United States Revenue laws of 1916, 1918, 1921, 1924, 1926, 1928 and 1932 considered the personal and additional exemptions as credits against the net income for the purpose of the normal tax; and subsequently, the United States Revenue Acts of 1934, 1935 and 1938 amended the former acts by making said exemptions as credits against the net income for the purpose of both the normal tax and surtax. Section 7 of our old Income Tax Law, instead of providing that the personal and additional exemptions shall be allowed as a credit against the net income, as in the United States Revenue Acts, prescribed that the amounts specified therein shall be allowed as an exemption in the nature of a deduction from the amount of the net income. Which has exactly the same effect as the provision regarding personal and additional exemptions in the said United States Revenue Acts. For, as it was explained in the Ways and Means Committee Report No. 764, 73d Congress, 2nd Session, pages 6, 23:

"To carry out the policy of retaining practically the same tax burden on ordinary income, it is necessary in connection with the proposed plan to allow the personal exemption and credits for dependents as an offset against surtax as well as normal tax. The personal exemption and credits for dependents would appear to be in lieu of deductions for necessary living expenses. They may well apply to both taxes as do all other ordinary deductions."

And Paul and Mertens, Law of Federal Taxation, Vol. 3, p. 509, state regarding the change in the United States Revenue Act of 1934; "The practical effect of this statutory change is to convert the personal exemption and credit for dependents into deductions * * *." (Italics ours.)

The lower court, therefore, erred in not declaring that personal and additional exemptions claimed by appellant should be credited against or deducted from the net income, and consequently in not sentencing appellee to refund to appellant the sum of P475.00.

In view of all the foregoing, the decision of the lower court is affirmed in so far as it dismisses appellant's first cause of action, and is reversed in so far as it dismissed his second cause of action. Appellee is sentenced to refund to appellant the sum of P475 claimed in the second cause of action of the complaint. Without pronouncement as to costs. So ordered.

Moran, C. J., Pablo, Hilado, Bengzon, Briones, and Tuason, JJ., concur.

CONCURRING AND DISSENTING

PARAS, J.:

I concur in the majority opinion in so far as it affirms the dismissal of appellant's first cause of action, but I dissent from so much, thereof as reverses the dismissal of appellant's second cause of action.

The elimination from section 23 the Nationax Internal Revenue Code of the words "in the nature of a deduction from the amount of the net income" (which appeared in section 7 of the old Income Tax Law), could not have been effected without a purpose; and said purpose certainly is not to retain the meaning and effect of the suppressed words. If the legislative department did not intend to make an essential change, the logical and clear

way of doing so was to recopy the old provision. Said elimination was undoubtedly in answer to, and an acceptance of, the innovation proposed by the Tax Commission, namely, that the amount payable under the present law should be the difference between the tax due on the entire net income and that due on the exemptions, thereby doing away with the former practice of allowing the exemptions to be deducted from the net income and basing the tax on the difference. We cannot say that the failure of the lawmakers to incorporate in the new Code the provision regarding tax credits allowable to individuals, as prepared and submitted by the Tax Commission to the National Assembly in substitution of section 7 of the old Income Tax Law, suggests a rejection of the new plan and the retention of the old policy, since the desired aim had equally been accomplished by mere elimination of the words above referred to. Indeed, at the rates fixed in section 21 of the new Code, the amounts of personal and additional exemptions granted to individuals under section 23 are exactly the amounts specified in the provision recommended by the Tax Commission, namely, P10 for single individuals, P30 for married persons or heads of family, and P10 for each dependent. Section 23 should thus be construed not as an original provision, but as one which is the result of a revision.

The interpretation now pursued by the Government is further consistent with the circumstance that the tax is levied upon the "entire net income" (section 21), which means "the gross income computed under section 29, less the deductions allowed by section 30" (section 28). It is significant that section 30 fails to make any reference to "personal exemptions". The explanation contained in the Ways and Means Committee Report No. 764, 73rd Congress, 2nd Session, to the effect that the "personal exemption and credits for dependents would appear to be in lieu of deductions for necessary living expenses," cannot have controlling force because, in computing the net income both under the new Code (Section 31) and under the old Income Tax Law (section 5), no deduction is allowed in respect of living expenses.

Of course, neither an alteration in phraseology nor the omission or addition of words in a later statute will necessarily alter the construction of the former act, but, in the present case, the eliminated words were the very basis for the prior construction. The alteration here is one of substance, and not merely of form.

Besides, the majority, by their position, are (unwittingly I hope) playing favorite to the taxpayers in the upper brackets, a situation which undoubtedly could not have been intended by the legislators. The following remarks of counsel for the Government are in point:

"Lastly, the action of the appellee Collector, in allowing merely a tax credit upon the amount of the personal exemptions, gives all taxpayers entitled to the same exemptions, an equal privilege. The tax saving is the same for taxpayers having equal number of dependents, whether rich or poor, just as the amount of exemptions remains the same for all taxpayers under analogous circumstances.

"On the contrary, the method advocated by appellant (of deducting the exemption from the total taxable income) benefits the rich taxpayers, rather than the poor ones. To convince us of the fact, it is enough to compute the tax on an income lesser than appellant's; say, of P15,000.

Appellant's Method

Appellees

"Net income

15,000.00

Net income

P15,000.00

"Less exemption

3,500.00

Taxable income

P15,000.00

Taxable income

P11,500.00

Taxed as follows:

Income

Rate

Tax

Income

Tax

P2,000.00

1%

P20.00

P2,000.00

Exempt.

2,000.00

2%

40.00

2,000.00

P10.00

(1,500 exempt)

2,000.00

3%

80.00

2,000.00

60.00

4,000.00

4%

160.00

4,000.00

160.00

1,500.00

5%

75.00

5,000.00

250.00

P11,500.00

P355.00

P15,000.00

P480.00

"A comparison of this computation with that of the tax on appellant's income, page 19 of this brief, reveals that, in appellant's case, the deduction of the exemption results in a saving of 15 per cent tax on P3,500 (P525) while in the case just discussed, where the taxpayer's income is much less, the deduction method saves the taxpayer only 5 per cent tax on P3,500 (P175), because in this case the highest bracket of the taxpayer's income is only subject to 5 per cent. So that the appellant, with an income of P137,607.09, economizes by the deduction three times more than the second taxpayer whose income is merely P15,000. It requires little argument to show that a method of computing taxes whereby the same exemption results in a higher benefit for the taxpayer with the bigger income can neither be just nor equitable."

My vote is to affirm the judgment appealed from in toto.

DISSENTING AND CONCURRING

PERFECTO, J.:

We dissent from the majority opinion affirming the decision of the lower court in so far as it dismisses appellant's first cause of action.

Plaintiff "filed an income tax return for the calendar year 1939 showing that he made a net profit amounting to P52,449.29 on embroidery business and P17,850 on dividends from various corporations; and that from the purchase and sales of mining stocks and securities he made a profit of P10,741.30 and incurred losses in the amount of P78,049.10, thereby sustaining a net loss of P67,307.80 * * *."

Defendant disallowed the deduction of the loss of P67,307.80, on the theory that the loss was sustained by plaintiff from the sale of mining stocks and securities which are capital assets and that the loss arising from the same should be allowed only to the extent of the gain from such sales.

The question is whether the loss was incurred in trade and business.

"Business is a very comprehensive term and embraces everything about which a person can be employed. Black's Law Dictionary, 158 citing *People vs. Commissioners of Taxes* (23 New York; 242, 244). 'That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit.' Bouvier's Law Dictionary, Vol. 1, p 273. *Flint vs. Stone Tracy Co.* (1910), 220 U. S., 107, 171; 31 Sup. Ct., 342; 55 Law. Ed., 389; Ann. Cas. 1912-B, Law. 1312, cited with approval in *Von Baumbach vs. Sargent Land Company*. (1916) 242 U. S., 503 at 515."

We do not have any doubt that plaintiff engaged in the business and trade of buying and selling mining stocks and securities. We do not see any reason why the losses sustained by him in said business should be disallowed in the computation for purposes of determining the income tax he has to pay.

We are of opinion that the lower court's decision should be reversed and that, as to plaintiff's first cause of action, defendant should be ordered to reimburse the plaintiff to defendant under protest.

In regards to the second cause of action of plaintiff, we agree with the theory of the majority as explained in the opinion, but we can not concur in the dispositive part thereof ordering the refund of the sum P475, in view of the conclusion we have arrived at regarding plaintiff's first cause action, it appearing that plaintiff only prays for the refund of P475 as an alternative in the event his first cause of action is dismissed.

CONCURRING AND DISSENTING

PADILLA, J.:

I dissent from the opinion of the majority on the second cause of action only.

It must be borne in mind that an exemption is neither an exclusion provided for in section 29(b) nor a deduction provided for in section 30, C. A. No. 466. Not being a deduction, the amount constituting an exemption must not be excluded or deducted from the gross or net income. Exemption means condonation, remission, or, as the trial court aptly calls, waiver of the tax by the government. The amount of exemption being fixed (section 23, C. A. No. 466), the tax condoned, remitted or waived must also be fixed. The exemption provided for in the Income Tax Law is for personal, living, or family expenses of the taxpayer. It is the same amount regardless of the amount of net income subject to tax. The law makes no distinction between small and large incomes. The Collector's computation accomplishes the aim of the law, for the tax on the amount exempted would be the same for every

net income, large or small, subject to tax. To illustrate, let us take the case of two married persons with spouses not legally separated from them and each with three dependent children, whose net incomes are P10,000 and P30,000, respectively. Under the Collector's interpretation of the law, the computation would be, as follows:

P10,000.00

net income

P30,000.00

net income

P2,000.00

1%

P20.00

P2,000.00

1%

P20.00

2,000.00

2%

40.00

2,000.00

2%

40.00

2,000.00

3%

60.00

2,000.00

3%

60.00

4,000.00

4%

160.00

4,000.00

4%

160.00

10,000.00

5%

500.00

P10,000.00

Tax

P220.00

10,000.00

6%

600.00

Exemption

60.00

P30,000.00

Tax

P1,320.00

Exemption

P60.00

Under appellant's interpretation of the law, the computation would be, as follows:

P10,000.00

net income

P30,000.00

net income

4,000.00

less exemption

4,000.00

less exemption

6,000.00

taxable net

P26,000.00

taxable net

P2,000.00

1%

P20.00

P2,000.00

1%

P20.00

2,000.00

2%

40.00

2,000.00

2%

40.00

2,000.00

3%

60.00

2,000.00

3%

60.00

4,000.00

4%

160.00

P60,000.00

Tax

P120.00

10,000.00

5%

500.00

6,000.00

6%

360.00

P26,000.00

Tax

P1,140.00

or under appellant's other interpretation of the law, the computation would be, as follows:

P2,000.00

1%

P20.00

P2,000.00

1%

P20.00

2,000.00

2%

40.00

2,000.00

2%

40.00

2,000.00

3%

60.00

2,000.00

3%

60.00

4,000.00

4%

160.00

4,000.00

4%

160.00

10,000.00

5%

500.00

P10,000.00

Tax

P120.00

6,000.00

6%

360.00

Exemption

P160.00

4,000.00

6%

240.00

P30,000.00

Tax

P1,140.00

Exemption

P140.00

The result under appellant's computation is that a large net income would enjoy a bigger amount of tax exemption than a small net income, when the law is clear that such exemption is of fixed amount regardless of the amount of

net income subject to tax.

It is not correct to say that the "Wisconsin Plan" referred to in the majority opinion was not adopted. It was adopted not in form but in substance.

I am of the opinion the at the judgment under review should be affirmed.

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