

JOSE AVELINO, PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT

G.R. No. 17715. July 31, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Court of Tax Appeals confirming substantially the assessment of income tax deficiencies of the petitioner Jose Avelino for the years 1946, 1947 and 1948. The assessments approved by the Court of Tax Appeals for the said years are as follows:

1946

Net taxable income in 1946

P106,223.06

Tax due on P106,223.06

P29,669.22

Less tax previously assessed & paid

1,472.08

Deficiency tax

P28,197.14

50% surcharge

P14,098.57

Total deficiency Tax & surcharge

P42,295.71

1947

Net taxable income in 1947

P43,504.34

Tax due on P43,504.34

8,361.22

Less tax previously assessed & paid

4,375.72

Deficiency tax

P3,985.50

50% surcharge

1,992.75

Total deficiency tax & surcharge

.P5,978.25

1948

Net taxable income in 1948

P38,885.81

Tax due on P38,885.81

P7,090.31

Less tax previously assessed & paid

747.51

Deficiency tax.

P6,342.80

50% surcharge

3,171.40

Total deficiency tax & surcharge

P9,514.20

SUMMARY

Deficiency tax & surcharge for 1946

P42,295.71

Deficiency tax & surcharge for 1947

5,978.25

Deficiency tax & surcharge for 1948

9,514.20

GRAND TOTAL

P57,788.16

In the brief of the petitioner various assignments of errors are made, each error raising specific questions of law and of fact. The errors will now be considered one by one, each independently of the others.

I

THE COURT OF TAX APPEALS ERRED IN NOT HOLDING THAT THE NET WORTH METHOD USED BY RESPONDENT IN DETERMINING PETITIONERS TAXABLE INCOME IS WITHOUT JUSTIFIABLE BASIS.

It is contended under this assignment of error that there is no reasonable certainty of the amount taken as an opening net worth, there being no sufficient basis for establishing such opening net worth. Included in the opening net worth as of January 1, 1946, both according to the petitioner as well as to the Commissioner of Internal Revenue, are P700.00 and P5,500.00, representing cash in bank, PNB savings account and PNB current account, respectively. But petitioner claims that the cash on hand in the opening net worth should be, on December 31, 1945 (or January 1, 1946), not P100.00 as estimated by respondent but P47,300.00, for the reason that in an income tax return submitted by the wife of the petitioner, Mrs. Enriqueta Avelino, she made it appear that she netted a profit of P55,000.00 from her business of importation of shoes, operation of a bar, and of a restaurant, shortly after liberation. The income tax return submitted by her for the year 1946 was submitted in the year 1949 and was presented at the hearing as Exhibit "A". Petitioner asserts that his wife made a gain of P55,000.00 during the year 1946, but the supposed copy of the income tax return that she has submitted as evidence does not show how that amount had been earned. If she did actually earn that amount Exhibit "A" would have contained the details indicating the transactions in which the big sum was earned. Why none of that amount or the greater part thereof appears to have been deposited in a bank has not been explained. Apparently the court below considered the return as a self-serving statement, and we agree that on the basis of that income tax return, without any other explanation how the gains were used or invested or deposited, there is no reason to disturb the action of the court below in giving no credence to the said alleged existence of the cash net worth existing at the beginning of the year 1946. We therefore declare that the alleged error has not been committed.

II

THE COURT OF TAX APPEALS IN COMPUTING THE DEFICIENCY INCOME TAX ALLEGEDLY DUE FROM THE PETITIONER, ERRED IN NOT DEDUCTING FROM THE INCREASE IN NET WORTH OF THE PETITIONER FOR THE YEAR 1948. THE SUM OF P6,508.00 REPRESENTING ONE-HALF (1/2) OF THE CAPITAL GAIN REALIZED FROM THE SALE OF TWO PARCELS OF LAND (CAPITAL ASSETS) MADE IN 1948.

The respondent denies that this error has been committed. In Annex I, the yellow working sheet prepared by Examiner Lasquety, it is shown that the sum of P6,508.00 was deducted in the year 1948 as the taxable capital gain. This deduction was sustained by the Court below. The alleged error, therefore, is disproved by Annex I.

III

THE COURT OF TAX APPEALS ERRED IN DISALLOWING THE AMOUNT OF P9,816.78 AS DEPRECIATION ON RENTAL PROPERTIES IN DETERMINING THE PETITIONER'S NET WORTH FOR THE YEAR 1948.

This supposed error was not committed as evidenced by an examination of Annex I, which shows that P9,816.78 was allowed as deduction for 1948 under the heading "Reserve for Depreciation, Building".

IV

THE COURT OF TAX APPEALS ERRED IN FAILING TO REFLECT OR TAKE UP IN 1947 THE IMPROVEMENTS VALUED AT P35,000.00, ERECTED IN 1947 IN THE QUEZON CITY LOT OF PETITIONER.

This error again is disproved by Annex I, the yellow working sheet prepared by Bureau of Internal Revenue Examiner Lasquety. This working sheet was adopted by the Court of Tax Appeals and it shows that P35,000.00 alleged to have been omitted was actually taken into account in the computation of the 1947 accounts of the petitioner, as improvements on four buildings.

V

THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONER AND HIS WIFE HAD INVESTMENT IN THE TALISAY LUMBER COMPANY IN THE SUM OF P29,000.00, WITHOUT CONSIDERING AN OFFSETTING LIABILITY IN THE SAME AMOUNT.

Neither do we find any merit in this assignment of error. According to the evidence, the articles of incorporation of the Talisay Lumber Company, which is under oath, petitioner and his wife invested the sums of P28,000.00 and P1,000.00 in the company. If these sums were not furnished by the petitioner but by the organizer of the company, still the total amount of P29,000.00 should be considered as a gift, or an income received by the petitioner and his wife from the said organizer of the Talisay Lumber Company, which income is liable to tax.

VI

THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONER HAD INVESTMENT IN AVELINO, BAGTAS, ALZATE AND COMPANY IN THE SUM OF P5,000.00 FOR EACH OF THE YEARS 1946 TO 1950.

Under this assignment of error, petitioner argues that the appearance of the said amount as having been contributed to the partnership by petitioner is no proof that that amount was petitioner's actual investment in the company. The same reasons obtaining in the case of the investment of P29,000.00 of the spouses in the Talisay Lumber Company obtain in the case of the petitioners investment in the partnership of Avelino, Bagtas, Alzate and Company.

VII

THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE LOAN OF P10,000.00 FROM ROSARIO GRAY DE HAYS AND ANOTHER LOAN OF P30,000.00 FROM ANGELA M. VDA. DE BUTTE NEVER EXISTED.

In support of this assignment of error, petitioner contends that he owed the sum of P10,000.00 to Rosario Gray de Hays, which amount represents one-half of the price of P20,000.00 which was the consideration for the sale of certain property described in Exhibit "C". But the original of the document shows that the amount of the consideration was P22,000.00 and the vendor was Severina de Casal, and nothing is said in the original of the document that any part of the amount under consideration has not been paid.

It is also alleged in support of this error that the petitioner is indebted to Angela M. Vda. de Butte in 1948 in the sum of P30,000.00. Mrs. Butte testified that petitioner owed her the amount of P30,000.00; that the debt was in the form of a check and that in 1949 Mr. Avelino, the petitioner, paid P15,000.00, and that he paid the balance in 1951, no interest on the loan having been demanded and paid. Evidence of this character has, as a rule, been declared insufficient for purposes of the income tax law. (Eugenio Perez vs. Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958; Aurelio P. Reyes vs. Collector of Internal Revenue, G.R. Nos. L-11534 & L-11558, Nov. 25, 1958.) We declare that in consonance with the rule which appears to be reasonable, the alleged loan cannot be declared as actually existing.

VIII

THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONER COMMITTED FRAUD IN FILING HIS INCOME TAX RETURNS FOR THE YEARS UNDER REVIEW.

Under this alleged error it is contended that there was no evidence of fraud committed by the petitioner. We find that the acts of the petitioner in declaring an income of only P5,258.99 in the year 1946 when he had an actual income of P106,223.06; his act in submitting an income tax return for 1947 only for the amount of P12,219.96 when he actually had a net taxable income of P43,504.34; and lastly his act in reporting an income for the year 1948 which is only ten percent of the actual taxable income of P38,885.81—all these circumstances justify the finding of the court below that there has been fraud subject to be penalized by law.

IX

THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE RESPONDENT'S ASSESSMENTS HAVE NOT YET PRESCRIBED.

In this assignment of error it is contended that the liability of the petitioner for income tax for the years 1946, 1947 and 1948 has already prescribed. The contention is without merit as it has been found out that the petitioner has been guilty of fraud. The period within which he may be subjected to liability in case of fraud begins from the moment the fraud is discovered and not when the income tax return was presented. (Sec. 332, Internal Revenue Law)

X

THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE PETITIONER LIABLE FOR P57,788.16 AS DEFICIENCY INCOME TAX FOR THE YEARS 1946, 1947, AND 1948.

This supposed error is the result of the previous errors and need not be considered.

Finding no error in the conclusion of fact and of law made by the respondent court, we hereby affirm the assessments made by it as above indicated, with costs against petitioner.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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