

MARIANO CU UNJIENG, GUILLERMO A. CU UNJIENG AND CU UNJIENG E HIJOS, PETITIONERS, VS. JUAN POSADAS, COLLECTOR OF INTERNAL REVENUE, SOTERO RODAS, FIRST ASSISTANT FISCAL OF THE CIT...

G.R. No. 40235. September 06, 1933

Ponente: STREET, J.

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STREET, J.:

This is a petition for the writ of prohibition presented by Mariano Cu Unjieng, Guillermo A. Cu Unjieng, and Cu Unjieng e Hijos against Juan Posadas, Collector of Internal Revenue, Sotero Rodas, First Assistant Fiscal of the City of Manila, Serafin P. Hilado, Solicitor-General, and L. S. Goddard, Judge of the Court of First Instance of Manila.

The petition is now submitted upon the answer of the respondents, and the facts essential to a decision in this court are as follows: A criminal case (No. 42649) is now being tried in the Court of First Instance of the City of Manila, before Judge L. S. Goddard, wherein Mariano Cu Unjieng is the accused. In the course of the trial in said case the prosecution desired to submit as evidence the income tax returns of Mariano Cu Unjieng, Guillermo A. Cu Unjieng, and Cu Unjieng e Hijos for the years 1929, 1930, and 1931. The Solicitor-General, on August 17, 1933, therefore addressed a letter to the Collector of Internal Revenue requesting that the income tax returns referred to should be produced before Judge Goddard in the Court of First Instance of Manila, on August 18, 1933, there to be used as evidence in the criminal case mentioned.

Accordingly, on said date, a representative of the Bureau of Internal Revenue appeared in court with said returns, and the prosecuting attorney asked leave to present said witness and to submit said income tax returns as evidence. Counsel for the defense objected on the ground that the production of said returns would be in violation of sections 30 and 31 of the Income Tax Law. After discussion of the matter the court suspended its resolution in order to give an opportunity to the attorneys for the defendant to submit the present petition.

The provisions of law pertinent to the discussion are these:

"After the assessment shall have been made, as provided in this Law, the returns together with any corrections thereof which may have been made by the Collector, shall be filed in the Office of the Collector of Internal Revenue and shall constitute public records and be open to inspection as such upon the order of the Governor-General under rules and regulations" to be prescribed by the Secretary of Finance." (Subsec. [b], sec. 14, of Income Tax Law, Act No. 2833.)

"Sec. 2716. Unlawful divulgence of trade secrets.—Any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business or income of any taxpayer, the secrets, operation, style of work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties shall be fined in a sum not more than two

thousand pesos or be imprisoned for a term of not less than six months nor more than five years, or both." (Sec. 2716, Adm. Code, as amended by sec. 30 of Act No. 2833.)

"Sec. 2731. Procuring unlawful divulgence of trade secrets.—Any person who causes or procures an officer or employee of the Bureau of Internal Revenue to divulge any confidential information regarding the business or income of any taxpayer knowledge of which was acquired by him in the discharge of his official duties and which it is unlawful for him to reveal, and any person who publishes or prints in any manner whatever not provided by law any income, profits, losses, or expenditures appearing in any income-tax return, shall be fined in a sum not more than two thousand pesos or be imprisoned for a term of not less than six months nor more than five years, or both." (Sec. 2731, Adm. Code, as amended by sec. 31 of Act No. 2833.)

In addition to the foregoing provisions we quote section 11 of the Regulations (No. 33) relating to inspection of income tax returns, promulgated by the Secretary of Finance and approved by the Governor-General on October 13, 1922, as follows:

"SEC. 11. Copies of returns furnished for use in legal proceedings.—When it becomes necessary for the Bureau of Internal Revenue to furnish returns or copies thereof for use in legal proceedings, inspection of such returns or copies that necessarily results from such use is permitted.

"The original income tax return of an individual, corporation, joint-stock company, partnership, joint account (cuenta en participacion), association, insurance company, or fiduciary, or a copy thereof, may be furnished by the Collector of Internal Revenue for use as evidence in litigation in any court, where the Government of the Philippine Islands is interested in the result, or for use in the preparation for such litigation, to provincial or city fiscal or any attorney connected with the Bureau of Justice designated to handle such matters, upon written request of the Attorney-General, or an assistant attorney acting on his behalf. When an income tax return or copy thereof is thus furnished, it must be limited in use to the purpose for which it is furnished, and is under no conditions to be made public except where publicity necessarily results from such use. In case the original return is necessary, it shall be placed in evidence by the Collector of Internal Revenue or by some other officer or employee of the Bureau of Internal Revenue designated by the Collector for that purpose, and after it has been placed in evidence it shall be returned to the files in the Office of the Collector in Manila. Neither the original nor a copy of an income tax return, desired for use in litigation in court where the Government of the Philippine Islands is not interested in the result and where such use might result in making public the information contained therein, will be furnished, except as otherwise provided in the next succeeding section." (21 Off. Gaz., 1246.)

A comparison of the Regulations just quoted, of our Department of Finance, with the Department regulations of the United States Treasury, promulgated under the Revenue Act prevailing in the United States, clearly discloses that our regulations governing the inspection of income tax returns were taken from those of the Treasury Department, with the sole difference that the federal regulations are not approved by the President, while our regulations were approved by the Governor-General.

Again, it is evident that the provisions of law quoted above place no restriction upon the divulgence of the information contained in income tax returns when the publication of such information is made in the manner provided by law. It results that, when the custodian of income tax returns is lawfully required to reveal them, he is protected from the penalties expressed in sections 2716 and 2731 of the Administrative Code. There was no intention to restrict the use of these documents, when their custodian is lawfully required to produce them or make their contents known.

In order to define the extent to which the returns are open to inspection, the Regulations from which we have quoted were prescribed by our Secretary of Finance with the approval of the Governor-General. We note that in section 1 of these Regulations it is stated that they deal only with the inspection of returns, and that other uses to

which returns may be lawfully put, without action by the Governor-General, are not covered by the Regulations. Upon a narrow interpretation of this language, it might seem that the Regulations were intended to cover only such inspections as are made of the returns in the Bureau of Internal Revenue and that it was not intended to prescribe the conditions under which the returns, or copies thereof, may be supplied for use in legal proceedings. But in section 11 of the Regulations we find provisions dealing precisely with this matter; and we note that the prerequisites prescribed in section 11 were followed as a preliminary to the production of the returns in court in the present case. We consider that the word "inspection", in subsection (b) of section 14 of Act No. 2833 is used in an untechnical sense, sufficiently broad to include the production of the returns in court.

In the second paragraph of section 11 of the Regulations we find it stated that the original income tax returns, or copies thereof, may be furnished by the Collector of Internal Revenue for use as evidence in litigation in any court where the Government of the Philippine Islands is interested in the result. Stress is laid by the attorneys for the petitioners on the words "where the Government of the Philippine Islands is interested in the result", and it is suggested that the Government of the Philippine Islands is not interested in the result in this case. To this contention we are unable to give our assent. The case now on trial is one prosecuted under and by the authority of the Government of the Philippine Islands, and although the case is styled *People of the Philippine Islands vs. Mariano Cu Unjieng et al.*, the Government is naturally interested in the Jesuit. A criminal case is a sort of case in which, above all others, the Government, as corporate representative of all society, is highly and immediately interested.

Finally, we observe that the Solicitor-General in his letter to the Collector of Internal Revenue states that the Government of the Philippine Islands is interested in the result of the decision in the case wherein the evidence in question is to be used, and if we could not take judicial knowledge of that interest, this certification from the legal representative of the Government might be taken as a sufficient indication of the fact.

It results that the income tax returns which have been brought into court under the circumstances above mentioned are admissible in evidence, provided they contain matter really pertinent to the issue, or issues, in the case now pending before the respondent judge. Upon this point his Honor, as we understand, has not yet been called upon to rule.

In what has been said we pretermitt any discussion of the question whether the writ of prohibition is a remedy that can be used in any case to prevent a Judge of First Instance from admitting evidence which one of the litigants believes to be privileged or protected from disclosure. As was said of the use of the writ of mandamus, in *Orient Insurance Co. vs. Revilla and Teal Motor Co.* (54 Phil., 919, 929), this court is loath to interfere in the course of a trial in the Court of First Instance, as such interference might unduly prolong the litigation in that court. In the case before us we find nothing which would justify us in departing from the ordinary criterion.

In conclusion we wish to observe that the federal decisions discussing matters analogous to that here under consideration are all cases where appeal had been taken in ordinary course, and the question raised in the appellate court was whether or not the income tax returns were properly admitted in evidence. In *Corliss vs. U. S.* ([1925], 7 Fed. [2nd], 455), it was held that the regulations of the Treasury Department governing the use of such documents had not been followed, and the returns used were therefore inadmissible. In *Lewy vs. U. S.* ([1928], 29 Fed. [2nd], 462), the tax returns had been obtained in compliance with the Treasury regulations, and hence were admissible. In *Gibson vs. V. S.* ([1929], 31 Fed. [2nd], 19), it was held that a supplementary income tax return was admissible in evidence when the regulations of the Treasury Department with reference to the production of returns had been followed, notwithstanding the fact that the deputy collector had agreed with the taxpayer that such supplementary return would not be used against him in any case pending in court. In all of these cases relief against the use of the returns was sought in ordinary course of appeal. We may add that the doctrine of those cases

support the conclusion reached above that the income tax returns involved in this case were properly brought before the court.

The present petition, in our opinion, is not maintainable. and the same is accordingly dismissed, with costs against the petitioners. So ordered.

Malcolm, Abad Santos, and Hull, JJ., concur.

Imperial, J., concurs in the result.

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