

TEC BI & COMPANY, INC., PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 42115. March 30, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

Suit was brought in the Court of First Instance of Manila by Tec Bi & Company, Inc., against the Collector of Internal Revenue to recover the sum of P4,387.75 paid under protest as income taxes by Yu Yiong & Co. (the predecessor of the said corporation) for the calendar years 1921, 1923, 1924, 1926 and 1927. Judgment was rendered requiring the collector to refund the taxes paid for the years 1921, 1923 and 1924 only. Both parties have appealed to this court.

The cause was submitted and must be determined on the following agreed statement of facts:

"1. Que el dia 30 de septiembre de 1910, se organizo en esta Ciudad de Manila una sociedad mercantil regular colectiva denominada 'Tec Bi y Compania' de la que era uno de los socios colectivos el nnado Yu Hiang Co y cuya sociedad file debidamente inscrita en el Registro Mercantil de esta Ciudad.

"2. Que habiendo failed do durante el periodo social el socio Yu Hiang Co., de conformidad con los terminos del Parrafo XVII de la referida escritura social, que dice:

" 'XVII. En el caso de que un socio falleciere en China o en otro territorio que no esta comprendido dentro de la jurisdiccion de las Islas Filipinas, sus herederos legales deberan, dentro de un mes despues del fallecimiento del socio difunto, dirigir una carta a la Sociedad manifestando que su causante, socio de esta Sociedad ha fallecido y autorizando a cualquiera de sus herederos para sucederle en los derechos y acciones del difunto.' Y habiendo sido notificado plebidamente la sociedad de este hectio la misma reconocio a Yu Yiong como sucesor del finado Yu Hiang Co en ia referida sociedad denominada Tee Bi y Compañia.

"3. Que el dia 9 de noviembre del ano 1920, se reorganizo la referida sociedad bajo el nombre colectivo de Yu Yiong y Compania, cuya escritura se registro en noviembre 12, 1920, y haciendose constar en dicha escritura que habiendo fallecido el socio Yu Hiang Co el mismo era sustituido por su heredero Yu Yiong figurando este ultimo en la nueva compania con un capital de ?137,500 que era el mismo capital de su padre Yu Hiang Co en la anterior sociedad. Los socios y sus respectivaa contribuciones al capital social segiin el articulo 2 de dicha escritura eran los siguientes:

Yu Yiong

P137,500.00

Faustino Ang Chong Jua

57,750.00

Uy Quioco

99,000.00

Uy Piu Ki alias Uy Piuco

44,000.00

Tan Guioc Beng

41,250.00

Gaw Chay Lay

27,500.00

Lim Sieng alias Lim Siengco

22,000.00

Lim Sang King

16,500.00

Lim Chiw

5,500.00

Total

451,000.00

"4. Que hacia los años 1920 6 1921 Heng Shiu Nian entablo demanda contra Yu Yiong y otros hermanos de este (civil No. 19578 del Juzgado de Primera Instancia de Manila) reclamando los derechos hereditarios que le correspondian como participacion del finado Yu Hiang Co dentro de la razon social Yu Yiong y Compania, y dicho asunto se transigio mediante una estipulacion sometida por las partes al, Juzgado el 1.º de noviembre de 1921, que fue aprobada por este en la misma fecha, en la cual se convino en traspasar a favor de la demandante Heng Shiu Hian una participacion por valor de P9,500 que los demandados tenian en la sociedad Yu Yiong y Compania.

"5. Que en la misma fecha 1.º de noviembre de 1921 Yu Yiong traspaso a favor de su hermano Tee Huan alias Yu Siong una participacion en la suma de P9,011.23 en el capital relicto por su difunto padre en la sociedad Yu Yiong y Compania, cuya escritura fue ratificada ante el notario publico D. Salvador Zaragoza.

"6. Que con fecha 21 de febrero de 1924 los socios de Yu Yiong y Compania en escritura publica otorgada-ante el notario publico Antonino Alfonso, inscrita como documento 161, en la pagina 69, Libro III del registro notarial de dicho notario, reconocieron y admitieron a los referidos Tee Huan alias Yu Siong y a la denominada Heng Shiu Nian alias Ang Shiu Lian como socios de la sociedad Yu Yiong y Compania con un capital de P19,011.23 y P9,500, respectivamente.

"7. En vista de que en dicha fecha 21 de febrero de 1924 la citada Heng Shiu Nian alias Ang Shiu Lian estaba ausente de las Islas Filipinas y no pudo por tanto firmar el documento antedicho, dicha Heng Shiu Nian alias Ang Shiu Lian con fecha 27 de diciembre de 1924 y en documento otorgado ante el notario Lorenzo Sunico, inscrito con el No. 211 en la pagina 79, iAtoro IV, del registro notarial de dicho notario, presto su conformidad a la escritura de que se hace mencion anteriormente.

"8. Que los antedichos documentos no fueron presentados al registro mercantil para su inscripcion hasta el 7 de julio de 1927 y no fueron registrados sino el 11 del mismo mes.

"9. Que por virtud de las transferencias mencionadas en los parrafos anteriores a los mencionados Yu Siong y Heng Shiu Nian se les acreditó en los libros de la compania sus correspondientes dividendos desde el año 1921 en relación con el capital reconocido a los mismos,

"10. Que en 12 de noviembre de 1927 por consideration de valor Yu Siong vendió su participacion en la firma Yu Yiong y Compania a favor de Uy Quioco y esta venta sólo se registró en el Registro Mercantil el 9 de junio de 1928.

"11. Que en 27 de octubre de 1928 el Colector de Rentas Internas reclamo de Yu Yiong y Compania el pago del impuesto de rentas internas correspondiente a los años 1921,

1923, 1924, 1926 y 1927 que representan las sumas que se detallan a continuacion, a saber:

Año

1921

P119.66

1923

283.32

1924

1,763.40

1926

968.14

1927

967.86

mas la suma de P285.37 en concepto de intereses y recargos, haciendo un total de P4,387.75 que la demandants pago bajo protesta el 24 de septiembre de 1931 y cuya protesta ha sido mas tarde desestimada por el Colector de Rentas demandado.

"12. Que con fecha 15 de enero de 1932 y en documento público otorgado en la Ciudad de Manila, Quirino Uy Quioco en su concepto de liquidador de la sociedad Yu Yiong y Compania cuyo periodo de existencia social habia expirado, vendio todo el activo y pasivo de la misma a favor de Tec Bi & Co. otra corporacion domestica organizada de conformidad con las leyes de las Islas Filipinas.

"13. Que una de las partidas del activo así traspasado es el derecho a recobrar del Colector de Rentas la referida suma de P4,387.75.

"Manila, 25 de septiembre de 1933."

Under sections 10 (a) and 8 (e) of the Income Tax Law (Act No. 2833 as amended by Acts Nos. 2926 and 3605) a registered general copartnership is exempted from the payment of income tax but an unregistered general copartnership is subject to the payment of income tax. It is admitted by the defendant-appellant, the Collector of Internal Revenue, that Yu Yiong and Company was a duly registered general copartnership, its articles of association having been registered in the Mercantile Register on November 12, 1920. But it is argued that the association Xu Yiong and Company ceased to be a registered general copartnership during the years 1921 to 1927 inclusive for the purposes of the income tax law because the copartnership failed to register until July 11,

1927, the transfers made on November 1, 1921, by Yu Yiong and Company of the following interests in the association: P9,500 to Heng Shiu Nian and P9,011.23 to Tee Huan as set out in the above agreed statement of facts. It is to be noted, however, that these transfers were not recognized by the association until February 21, 1924, when Yu Yiong and Company, by a notarial document, admitted the said assignees as new partners. Having regard to the requirements of the articles of association and the provisions of article 143 of the Code of Commerce, it is clear that the transfers made on November 1, 1921, as aforesaid, had no effect as regards the partnership until February 21, 1924, and we think that the trial court was correct in so holding, regardless of the incidental fact that by agreement of the parties the assignees received the accumulated dividends upon their respective shares since November 1, 1921.

We come now to the principal question of the case, namely : Did the failure of the association to record these transfers in the Mercantile Register until July 11, 1927, have the legal effect of converting the registered association of Yu Yiong and Company into an unregistered association? or, stated differently: Did the admission of Yu Siong, Heng Shiu Nian and Vy Quioco as additional partners in the firm under the circumstances mentioned, have the effect of dissolving the duly registered general partnership of Yu Yiong and Company and of creating a new unregistered copartnership for the interval between February 21, 1924, and July 11, 1927?

We have come to the conclusion that it did not have that effect for the following reasons: First, there is no provision in the Code of Commerce that such a conversion should take place. Second, there is no provision in the Code of Commerce that the registration of the transfers in the Mercantile Register on July 11, 1927, should have the effect of reviving or recreating the alleged extinct registered general copartnership of Yu Yiong and Company; in other words, the Code of Commerce does not recognize the existence of a hiatus such as the Government argues in this case. Third, articles 24 and 25 of the Code of Commerce, construed together, plainly contemplate the continued existence of the association in the manner and form in which it appears in the Mercantile Register regardless of the unregistered changes therein. Article 25 specifically provides in its last paragraph the consequences of the omission to register the resolutions or acts of a mercantile association which modify or alter the conditions of the recorded articles of association ; that is to say, any changes not so registered are binding between the members of the association but shall not prejudice third persons, who, on the other hand, may avail themselves thereof insofar as it may be advantageous to them. Fourth, uncertainties and confusion in trade and commerce would necessarily arise if the public could not rely upon the Mercantile Register to ascertain¹ the status of a registered commercial partnership.

There is not the slightest indication that the transfers in question were dishonest or fraudulent, or, that the delay in registering them has caused loss or disadvantage to the Government or any one else.

The case of *Tan Senguan & Co. vs. Collector of Internal Revenue* (55 Phil., 439), insofar as it may be in conflict with this decision, is to be considered overruled.

The judgment appealed from must be modified in the sense that the defendant-appellant Collector of Internal Revenue be adjudged and required to refund¹ to the plaintiff-appellant Tec Bi & Company, Inc. the sum of .P4,387.75 income tax and charges paid under protest as set out in paragraph 11 of the agreed statement of facts, without special pronouncement as to costs in this instance. So ordered,

Abad Santos, Hull, Imperial, Goddard, and Diaz, JJ., concur.

I certify that Justice Villa-Real voted with the majority.— Malcolm, Acting C. J.

DISSENTING

MALCOLM and VICKERS, JJ.,

With so much of the majority decision as overrules the appeal by the Government, we are in agreement; but with so much of the majority decision as conforms to the appeal by the plaintiff, we are not in agreement. Possibly the last statement needs one modification, for when the majority decision states that "uncertainties and confusion in trade and commerce would necessarily arise if the public could not rely upon the Mercantile Register to ascertain the status of a registered commercial partnership," that is substantially our stand. In other words, we believe that, since an unregistered general copartnership is subject to payment of the income tax, while a registered general copartnership is exempt, when, secretly or otherwise, the partnership changes its form without the transfers being recorded in the Mercantile Register, the partnership must suffer the consequences. Public policy demands that those constituting a partnership deal openly and not secretly so as not to nullify the purpose of the law.

The case of *Tan Senguan & Co. vs. Collector of Internal Revenue* (55 Phil., 439), presented a similar question for decision. In the Court of First Instance of Manila, Judge Edmund Block in rendering judgment very appropriately said':

"* * * merchants must make their records speak the truth. Merchants who sell to them have the right to know when partners withdraw capital and when other partners are admitted. Dealing with partnerships are on the faith of appearances.

"It is true that when a partner borrows from a firm, he does not necessarily decrease his share of the capital. But there may be an agreement among the partners that he does. The best evidence of this agreement is the book. When the book shows a partner has withdrawn all of his capital, he can not thenceforth be a partner unless he is an industrial one—and that fact should appear in the registry.

"When a new partner is introduced into a firm, persons dealing with it have the right to know it and to decide whether they wish to continue dealing.

"* * * It can not be said that the imposition of the additional income tax and penalties is cruel or inhuman. -The law is clear that unregistered concerns must pay income taxes as entities, while registered ones do not. The law was adopted¹ for the very purpose of encouraging registration of partnerships. The courts would render poor service to the business community if they did not strictly enforce the law."

That case was appealed to the Supreme Court, and the decision is found in volume 55, page 439, with the result that the decision of the trial court was affirmed. The trial judge in the instant case has only endeavoured to give application to the decision in the *Tan Senguan & Co. vs. Collector of Internal Revenue* case, or otherwise stated, has simply given application to a doctrine now found in our mercantile and tax laws.

Much more might be said about the appeals, but inasmuch as it is desirable to have the decision promulgated without delay, we will confine final comment to the statement that in our opinion the judgment appealed from should be affirmed without change.

Judgment modified.

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