

JOSE GATCHALIAN ET AL., PLAINTIFFS AND APPELLANTS, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. 45425. April 29, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The plaintiff brought this action to recover from the defendant Collector of Internal Revenue the sum of P1,863.44, with legal interest thereon, which they paid under protest by way of income tax. They appealed from the decision rendered in the case on October 23, 1936 by the Court of First Instance of the City of Manila, which dismissed the action with the costs against them.

The case was submitted for decision upon the following stipulation of facts:

"Come now the parties to the above-mentioned case, through their respective undersigned attorneys, and hereby agree to respectfully submit to this Honorable Court the case upon the following statement of facts:

"1. That plaintiffs are all residents of the municipality of Pulilan, Bulacan, and that defendant is the Collector of Internal Revenue of the Philippines;

"2. That prior to December 15, 1934 plaintiffs, in order to enable them to purchase one sweepstakes ticket valued at two pesos (P2), subscribed and paid therefor the amounts as follows:

1. Jose Gatchalian

P0.18

2. Gregroia Cristobal

.18

3. Saturnina Silva

.08

4. Guillermo Tapia.....

.13

5. Jesus Legaspi

.15

6. Jose Silva.....

.07

7. Tomasa Mercado

.08

8. Julio Gatchalian

.13

9. Emiliana Santiago

.18

10. Maria C. Legaspi

.16

11. Francisco Cabral.....

.13

12. Gonzalo Javier

.14

13. Maria Santiago.....

.17

14. Buenaventura Guzman

.13

15. Mariano Santos.....

.14

Total

2.00

"3. That immediately thereafter but prior to December 15, 1934, plaintiffs purchased, in the ordinary course of business, from one of the duly authorized agents of the National Charity Sweepstakes Office one ticket bearing No. 178637 for the sum of two pesos (P2) and that the said ticket was registered in the name of Jose Gatchalian and Company;

"4. That as a result of the drawing of the sweepstakes on December 15, 1934, the above-mentioned ticket bearing No. 178637 won one of the third prizes in the amount of P50,000 and that the corresponding check covering the above-mentioned prize of P50,000 was drawn by the National Charity Sweepstakes Office in favor of Jose Gatchalian & Company against the Philippine National Bank, which check was cashed during the latter part of December, 1934 by Jose Gatchalian & Company;

"5. That on December 29, 1934, Jose Gatchalian was required by income tax examiner Alfredo David to file the corresponding income tax return covering the prize won by Jose Gatchalian & Company and that on December 29, 1934, the said return was signed by Jose Gatchalian, a copy of which return is enclosed as Exhibit A and made a part hereof;

"6. That on January 8, 1935, the defendant made an assessment against Jose Gatchalian & Company requesting the payment of the sum of P1,499.94 to the deputy provincial treasurer of Pulilan, Bulacan, giving to said Jose Gatchalian & Company until January 20, 1935 within which to pay the said amount of P1,499.94, a copy of which letter marked Exhibit B is inclosed and made a part hereof;

"7. That on January 20, 1935, the plaintiffs, through their attorney, sent to defendant a reply, a copy of which marked Exhibit C is attached and made a part hereof, requesting exemption from the payment of the income tax to which reply there were enclosed fifteen (15) separate individual income tax returns filed separately by each one of the plaintiffs, copies of which returns are attached and marked Exhibits D-1 to D-15, respectively, in order of their names listed in the caption of this case and made parts hereof; a statement of sale signed by Jose Gatchalian showing the amounts put up by each of the plaintiffs to cover up the cost price of P2 of said ticket, copy of which statement is attached and marked as Exhibit E and made a part hereof; and a copy of the affidavit signed by Jose Gatchalian dated December 29, 1934 is attached and marked Exhibit F and made part hereof;

"8. That the defendant in his letter dated January 28, 1935, a copy of which marked Exhibit G is enclosed, denied plaintiffs' request of January 20, 1935, for exemption from the payment of tax and reiterated his demand for the payment of the sum of P1,499.94 as income tax and gave plaintiffs until February 10, 1935 within which to pay the said tax;

"9. That in view of the failure of the plaintiffs to pay the amount of tax demanded by the defendant, notwithstanding subsequent demand made by defendant upon the plaintiffs through their attorney on March 23, 1935, a copy of which marked Exhibit H is enclosed, defendant on May 13, 1935 issued a warrant of distraint and levy against the property of the plaintiffs, a copy of which warrant marked Exhibit I is enclosed and made a part hereof;

"10. That to avoid embarrassment arising from the embargo of the property of the plaintiffs, the said plaintiffs on June 15, 1935, through Gregoria Cristobal, Maria C. Legaspi and Jesus Legaspi, paid under protest the sum of P601.51 as part of the tax and penalties to the municipal treasurer of Pulilan, Bulacan, as evidenced by official receipt No. 7454879 which is attached and marked Exhibit J and made a part hereof, and requested defendant that plaintiffs be allowed to pay under protest the balance of the tax and penalties by monthly installments;

"11. That plaintiffs' request to pay the balance of the tax and penalties was granted by defendant subject to the condition that plaintiffs file the usual bond secured by two solvent persons to guarantee prompt payment of each installments as it becomes due;

"12. That on July 16, 1935, plaintiff filed a bond, a copy of which marked Exhibit K is inclosed and made a part hereof, to guarantee the payment of the balance of the alleged tax liability by monthly installments at the rate of P118.70 a month, the first payment under protest to be effected on or before July 31, 1935;

"13. That on July 16, 1935 the said plaintiffs formally protested against the payment of the sum of P602.51, a copy of which protest is attached and marked Exhibit L, but that defendant in his letter dated August 1, 1935 overruled the protest and denied the request for refund of the plaintiffs;

"14. That, in view of the failure of the plaintiffs to pay the monthly installments in accordance with the terms and conditions of the bond filed by them, the defendant in his letter dated July 23, 1935, copy of which is attached and marked Exhibit M, ordered the municipal treasurer of Pulilan, Bulacan to execute within five days the warrant of distraint and levy issued against the plaintiffs on May 15, 1935;

"15. That in order to avoid annoyance and embarrassment arising from the levy of their property, the plaintiffs on August 28, 1936, through Jose Gatchalian, Guillermo Tapia, Maria Santiago and Emiliano Santiago, paid under protest to the municipal treasurer of Pulilan, Bulacan. the sum of P1,260.93 representing the unpaid balance of the income tax and penalties demanded by defendant as evidenced by income tax receipt No. 35811 which is attached and marked Exhibit N and made a part hereof; and that on September 3, 1936, the plaintiffs formally protested to the defendant against the payment of said amount and requested the refund thereof, copy of which is attached and marked Exhibit O and made part hereof; but that on September 4, 1936, the defendant overruled the protest and denied the refund thereof; copy of which is attached and marked Exhibit P and made

a part hereof; and

"16. That plaintiffs demanded upon defendant the refund of the total sum of one thousand eight hundred and sixty-three pesos and forty-four centavos (P1,863.44) paid under protest by them but that defendant refused and still refuses to refund the said amount notwithstanding the plaintiffs' demands.

"17. The parties hereto reserve the right to present other and additional evidence if necessary."

Exhibit E referred to in the stipulation is of the following tenor:

"To whom it may concern:

"I, Jose Gatchalian, a resident of Pulilan, Bulacan, married, of age, hereby certify, that on the 11th day of August, 1934, I sold parts of my share on ticket No. 178637 to the persons and for the amount indicated below and the part of my share remaining is also shown to wit:

Purchaser

Amount

Address

1. Mariano Santos

P0.14

Pulilan, Bulacan

2. Buenaventura Guzman

.13

Do.

3. Maria Santiago

.17

Do.

4. Gonzalo Javier

.14

Do.

5. Francisco Cabral

.13

Do.

6. Maria C. Legaspi

.16

Do.

7. Emiliana Santiago

.13

Do.

8. Julio Silva

.13

Do.

9. Jose Silva

.07

Do.

10. Tomasa Mercado

.08

Do.

11. Jesus Legaspi

.15

Do.

12. Guillermo Tapia

.13

Do.

13. Saturnina Silva

.08

Do.

14. Gregoria Cristobal

.18

Do.

15. Jose Gatchalian

.18

Do.

2.00

Total cost of

said ticket; and that, therefore, the persons named above are entitled to the parts of whatever prize that might be won by said ticket.

"Pulilan, Bulacan, P. I.

(Sgd.) "Jose Gatchalian"

And a summary of Exhibits D-1 to D-15 is inserted in the bill of exceptions as follows:

"RECAPITULATIONS OF 15 INDIVIDUAL INCOME TAX RETURNS FOR 1934 ALL DATED JANUARY 19, 1935 SUBMITTED TO THE COLLECTOR OF INTERNAL REVENUE.

Name Exhibit No. Purchase Price Price Won Expenses Net prize

1. Jose Gatchalian D-1 P.018 P4,425 P480 3,945
2. Gregoria Cristobal D-2 .18 4,575 2,000 2,575
3. Saturnina Silva D-3 .08 1,875 360 1,515
4. Guillermo Tapia D-4 .13 3,325 360 2,965
5. Jesus Legaspi by Maria Cristobal D-5 .15 3,825 720 3,105
6. Jose Silva D-6 .08 1,875 360 1,515
7. Tomasa Mercado D-7 .07 1,875 360 1,515
8. Julio Gatchalian by Beatriz Guzman D-8 .13 3,150 240 2,910
9. Emiliana Santiago D-9 .13 3,325 360 2,965
10. Maria C. Legaspi D-10 .16 4,100 960 3,140
11. Francisco Cabral D-11 .13 3,325 360 2,965
12. Gonzalo Javier D-12 .14 3,325 360 2,965
13. Maria Santiago D-13 .17 4,350 360 3,990
14. Buenaventura Guzman D-14 .13 3,325 360 2,965
15. Mariano Santos D-15 .14 3,325 360 2,965

2.00 50,000"

The legal questions raised in plaintiffs-appellants' five assigned errors may properly be reduced to the two following: (1) Whether the plaintiffs formed a partnership, or merely a community of property without a personality of its own; in the first case it is admitted that the partnership thus formed is liable for the payment of income tax, whereas if there was merely a community of property, they are exempt from such payment; and (2) whether they should pay the tax collectively or whether the latter should be prorated among them and paid individually.

The Collector of Internal Revenue collected the tax under section 10 of Act No. 2833, as last amended by section 2 of Act No. 3761, reading as follows:

"Sec. 10. (a) There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company, partnership, joint account (cuenta en participacion), association or insurance company, organized in the Philippine Islands, no matter how created or organized, but not including" duly registered general copartnerships (companies colectivas), a tax of three per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the Philippine Islands by every corporation, joint-stock company, partnership, joint account (cuenta en

participacion), association, or insurance company organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise; Provided, however, That nothing in this section shall be construed as permitting the taxation of the income derived from dividends or net profits on which the normal tax has been paid.

"The gain derived or loss sustained from the sale or other disposition by a corporation, joint-stock company, partnership, joint account (cuenta en participacion), association, or insurance company, or property, real, personal, or mixed, shall be ascertained in accordance with subsections (c) and (d) of section two of Act Numbered Two thousand eight hundred and thirty-three, as amended by Act Numbered Twenty-nine hundred and twenty-six.

"The foregoing tax rate shall apply to the net income received by every taxable corporation, joint-stock company, partnership, joint account (cuenta en participacion), association, or insurance company in the calendar year nineteen hundred and twenty and in each year thereafter."

There is no doubt that if the plaintiffs merely formed a community of property the latter is exempt from the payment of income tax under the law. But according to the stipulated facts the plaintiffs organized a partnership of a civil nature because each of them put up money to buy a sweepstakes ticket for the sole purpose of dividing equally the prize which they may win, as they did in fact in the amount of P50,000 (article 1665, Civil Code). The partnership was not only formed, but upon the organization thereof and the winning of the prize, Jose Gatchalian personally appeared in the office of the Philippine Charity Sweepstakes, in his capacity as co-partner, as such collected the prize, the office issued the check for P50,000 in favor of Jose Gatchalian and company, and the said partner, in the same capacity, collected the said check. All these circumstances repel the idea that the plaintiffs organized and formed a community of property only.

Having organized and constituted a partnership of a civil nature, the said entity is the one bound to pay the income tax which the defendant collected under the aforesaid section 10 (a) of Act No. 2833, as amended by section 2 of Act No. 3761. There is no merit in plaintiffs' contention that the tax should be prorated among them and paid individually, resulting in their exemption from the tax.

In view of the foregoing, the appealed decision is affirmed, with the costs of this instance to the plaintiffs-appellants. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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